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From: Sullivan-Leshin, Isaac, PRC
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To: Records, PRC, PRC
Subject: 21-00224-PL; Filing Submission
Attachments: 21-00224-PL_2022-05-05_Commission_Final Order Adopting Amendments to Commission Rule 18.60.5 NMAC.pdf

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

Please file the attached **FINAL ORDER ADOPTING AMENDMENTS TO COMMISSION RULE 18.60.5 NMAC** into the above captioned case.

Thank you.

Isaac Sullivan-Leshin
Law Clerk for Office of General Counsel



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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

FINAL ORDER ADOPTING AMENDMENTS TO COMMISSION RULE 18.60.5 NMAC

THIS MATTER comes before the New Mexico Public Regulation Commission (the "Commission") upon the Commission’s own motion and in consideration of the written comments filed in this docket and the comments made at the public comment hearing in this matter.

Whereupon, being duly informed,

THE COMMISSION FINDS AND CONCLUDES:

1. Pursuant to the New Mexico Constitution, Article XI, § 2, the Public Regulation Commission Act, NMSA 1978, § 8-8-4; the Public Utility Act, NMSA 1978, § 62-14-10; and the Pipeline Safety Act, NMSA 1978, § 70-3-13; the Commission has jurisdiction to promulgate amendments pertaining to the Pipeline Safety Excavation Damage Prevention Rule (“PSEDP Rule”), 18.60.5 NMAC.

2. In its Order Initiating Proposed Rulemaking and Notice of Proposed Rulemaking, filed on January 5, 2022, the Commission found that it was in the public interest to provide notice of a rulemaking to amend or repeal and replace Commission Rule 18.60.5 NMAC, proposing changes to the PSEDP Rule to convert New Mexico from being a “clock state” to a “midnight state” for purposes of utility line location requests. The order included a Proposed Rule.

3. On January 27, 2022, the Commission filed in this docket its Affirmation that Notice of Proposed Rulemaking [*etc.*], attesting that the Notice of Proposed Rulemaking (“NOPR”) was published in the New Mexico Register and two newspapers of general circulation and that the NOPR and proposed rule language was provided to the public pursuant to the State Rules Act

(Section 14-4-2 NMSA 1978) and the Public Regulation Commission Act (Section 8-8-15 NMSA 1978). The Affirmation stated that:

3. The NOPR was published in Volume XXXIII, Issue 2 of the New Mexico Register on January 25, 2022. A copy the Affidavit of Publication of the NOPR in the New Mexico Register is attached to this Affirmation as Exhibit 2.
4. The NOPR was published in the Albuquerque Journal, a newspaper of general circulation in the State of New Mexico, on January 16, 2022. A copy of an Affidavit of Publication of the NOPR in the Albuquerque Journal is attached to this Affirmation as Exhibit 3.
5. The NOPR was published in the Las Cruces Sun News, a newspaper of general circulation in the State of New Mexico, on January 14, 2022. A copy of an Affidavit of Publication of the NOPR in the Las Cruces Sun News is attached to this Affirmation as Exhibit 4.
6. I affirm that I posted a copy of the Order and the Rulemaking Materials on the NMPRC website on January 11, 2022 on the NMPRC website at URL: <https://www.nmprc.org/rulemaking-proceedings/>. A screenshot of these URLs showing that links to the NOPR and Rulemaking Materials were posted and active as of January 11, 2022 is attached to this Affirmation as Exhibit 5.
7. I affirm that I posted the NOPR and rule language on the New Mexico Sunshine Portal on January 11, 2022. A screenshot and a printout from the Sunshine Portal website from January 11, 2022 showing the Sunshine Portal posting active on that day is attached to this Affirmation as Exhibit 6.
8. I affirm that the Order was submitted to the NMPRC Records Bureau for filing in NMPRC Docket 21-00224-PL on January 5, 2022. I further declare that by submitting the Order to the NMPRC Records Bureau for filing it caused a copy of the Order to be made available in all agency offices. A copy of the filing submission email is attached to this Affirmation as Exhibit 7.
9. I affirm that the service list for NMPRC docket number 21-00224-PL includes a complete list of electronic mailing addresses of all persons who have made a written request for notice from the agency of announcements addressing the subject of the rulemaking proceeding and all persons who have participated in the rulemaking who have provided an electronic mail or postal address to the agency. I affirm that I sent a copy of the Order to every email and postal address listed on the service list for NMPRC docket number 21-00224-PL on January 5, 2022 A copy of the email transmitting the Order to all email addresses on the list is attached to this Affirmation as Exhibit 8.
10. I affirm that I provided a copy of the NOPR and rule language to the New Mexico Legislative Council Service via e-mail on January 11, 2022. A copy of the email to the Legislative Council Service is attached to this Affirmation as Exhibit 9.

4. The NOPR provided notice that a public hearing on the proposed amendments would be held on April 5, 2022 at 2:00 p.m. via the Zoom platform. In addition, the NOPR provided notice of a March 15, 2022 deadline for submission of written initial comments and a March 29, 2022 deadline for the submission of written response comments.

5. On March 15, 2022 the Commission received written initial comments from the following: a) New Mexico Gas Company (“NMGC”), b) CenturyLink and c) Pipeline Safety Bureau of the Commission (“Staff”).

6. NMGC stated they had reviewed the Proposed Rule and supported all changes to 18.60.5 NMAC.

7. CenturyLink had no comments on the specific proposed revisions but expressed its reasons in full support of the midnight rule changes.

8. On March 29, 2022, written response comments were filed by NMGC and Staff.

9. NMGC stated its support of Staff’s additional modifications to Section 18.60.5.16 NMAC.

10. On April 5, 2022, NMGC, IACX Energy, New Mexico Utility Contractors Association, and Staff attended the public hearing via the Zoom platform.

11. All parties who participated in the public hearing expressed their full support for the proposed changes.

12. Issues and suggested changes presented by the interested persons and Staff are summarized per issue below;

13. **Earth-moving operations included under the PSEDP Rule:** Staff suggested additional proposed amendment language for section 18.60.5.16, adding the phrase “with

mechanical or non-mechanical equipment” in order to clarify that certain earth-moving operations are included under the PSEDP Rule as follows;

18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE: This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation as defined in Subsection E of 62-14-2 NMSA 1978 and excavation shall be promptly commenced, ideally within 24 hours.

A. Excavators. An excavator who damages an underground facility while excavating with mechanical or non-mechanical equipment shall exercise prudence and shall:

- (1) stop excavating immediately;
- (2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;
- (3) secure the site and direct people and traffic a safe distance away from the site of the damage;
- (4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;
- (5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility

14. The Commission concurs with Staff that Section 18.60.5.16 should be adopted as amended. The Commission finds that Staff’s recommendations clarify that certain earth-moving operations are covered under the PSEDP Rule.

IT IS THEREFORE ORDERED:

A. The Commission hereby adopts the amended proposed changes to NMPRC Rule 18.60.5 NMAC indicated as redlined changes in Exhibit A hereto (the “Amended Rule”).

B. The Amended Rule shall be filed and published at the earliest opportunity in the New Mexico Register, as required by the State Rules Act, NMSA 1978, Sections 14-4-1 to -11 (2017). This Order and the Amended Rule shall also be provided to the public in accordance with the State Rules Act.

C. The Commission's Office of General Counsel is authorized to make non-substantive formatting and proofreading changes to Exhibit A, as necessary, prior to publication.

E. Copies of this final order adopting a new rule shall be mailed or emailed, along with copies of the new rule, to all persons and entities appearing on the Certificate of Service as it exists at the time of issuance of this Order, to all commenters in this case, and to all individuals requesting such copies.

F. This Final Order is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 4th day of May, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Cynthia B. Hall, electronically signed

CYNTHIA B. HALL, COMMISSIONER DISTRICT 1

/s/ Jefferson L. Byrd, electronically signed

JEFFERSON L. BYRD, COMMISSIONER DISTRICT 2

/s/ Joseph M. Maestas, electronically signed

JOSEPH M. MAESTAS, COMMISSIONER DISTRICT 3

/s/ Theresa Becenti-Aguilar, electronically signed

THERESA BECENTI-AGUILAR, COMMISSIONER DISTRICT 4

/s/ Stephen Fischmann, electronically signed

STEPHEN FISCHMANN, COMMISSIONER DISTRICT



This is an amendment to 18.60.5 NMAC, Sections 7, 8, 12, 13, 15, 16, 17, 19 and 22, effective June 7, 2022.

(Office of General Counsel may make non-substantive changes prior to publication as required by State Records and Archives)

18.60.5.7 DEFINITIONS: In addition to the definitions in Section 62-14-2 NMSA 1978, 18.60.2.7 NMAC and 18.60.4.7 NMAC, as used in this rule:

~~A. access information means a telephone number, a facsimile number, an email address, and, if available, a web site address;~~

~~B. bid locate means the marking of underground facilities at the request of a project owner for the purpose of providing information to persons bidding on a project;~~

~~C. design locate means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons designing a project;~~

~~D. emergency locate means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within 2 hours for the purpose of an emergency excavation;~~

~~E. excavation locate means the marking of underground facilities for the purpose of providing information at the request of an excavator planning to commence excavation for the excavator's project;~~

~~F. holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;~~

~~G. mechanical vacuum excavation is deemed an appropriate non-mechanical method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose and is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities.~~

~~H. non-member UFO means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;~~

~~I. project owner or project engineer means the owner of a project involving excavation or the person designated by the owner to be in charge of the project involving excavation;~~

~~J. road maintenance means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;~~

~~K. underground facility operator (UFO) means a person who operates an underground facility;~~

~~L. working day means a 24 hour period excluding weekends and holidays.]~~

A. Definitions beginning with "A": access information means a telephone number, a facsimile number, an email address, and, if available, a web site address;

B. Definitions beginning with "B": bid locate means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons bidding on a project;

C. Definitions beginning with "C": [RESERVED]

D. Definitions beginning with "D": design locate means the marking of underground facilities at the request of a project owner or project engineer for the purpose of providing information to persons designing a project;

E. Definitions beginning with "E":

(1) effective date excludes the day that advance notice is provided as may be required in this rule, whereby the computed date shall begin at 12:01 a.m. after two full working days;

(2) emergency locate means the marking of underground facilities at the request of a person for an underground facility owner as soon as practical, ideally within 2 hours for the purpose of an emergency excavation;

(3) excavation locate means the marking of underground facilities for the purpose of providing information at the request of an excavator planning to commence excavation for the excavator's project;

F. Definitions beginning with "F": [RESERVED]

G. Definitions beginning with "G": [RESERVED]

H. Definitions beginning with "H": holiday means the day New Mexico state government observes New Year's Day, Martin Luther King, Jr's, Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, President's Day, and Christmas Day;

- I. Definitions beginning with “I”: [RESERVED]
 - J. Definitions beginning with “J”: [RESERVED]
 - K. Definitions beginning with “K”: [RESERVED]
 - L. Definitions beginning with “L”: [RESERVED]
 - M. Definitions beginning with “M”: **mechanical vacuum excavation** is deemed an appropriate non-mechanical method of excavating safely around underground facilities provided that the equipment has been specifically designed and built for this purpose and is operated in accordance with practices that provide appropriate levels of worker and public safety and prevent damage to buried facilities;
 - N. Definitions beginning with “N”: **non-member UFO** means a private underground facility owned by a homeowner and operated and located on a residential property or not subject to the jurisdiction of the commission;
 - O. Definitions beginning with “O”: [RESERVED]
 - P. Definitions beginning with “P”:
 - (1) **project engineer** means the person designated by the owner to be in responsible charge of the project involving excavation, including the design thereof, and who is licensed in accordance with Section 61-23 NMSA;
 - (2) **project owner** means the owner of a project involving excavation;
 - Q. Definitions beginning with “Q”: [RESERVED]
 - R. Definitions beginning with “R”: **road maintenance** means routine grading and resurfacing of the earth and gravel surface, but not the subbase, of a roadway for the purpose of maintaining the surface condition of the road and includes recovery of material from a borrow ditch but does not include road construction or reconstruction and shall entail moving no more than four inches of earth; road maintenance does not include street sweeping or road milling and resurfacing as long as the subsurface is not disturbed;
 - S. Definitions beginning with “S”: [RESERVED]
 - T. Definitions beginning with “T”: [RESERVED]
 - U. Definitions beginning with “U”: **underground facility operator (UFO)** means a person who operates an underground facility;
 - V. Definitions beginning with “V”: [RESERVED]
 - W. Definitions beginning with “W”: **working day** means a full business day excluding weekends and holidays;
 - X. Definitions beginning with “X”: [RESERVED]
 - Y. Definitions beginning with “Y”: [RESERVED]
 - Z. Definitions beginning with “Z”: [RESERVED]
- [18.60.5.7 NMAC - Rp, 18.60.5.7 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.8 RESPONSIBILITIES OF ONE-CALL NOTIFICATION SYSTEMS: A one-call notification system shall:

- A. provide toll-free access;
- B. provide to the commission quarterly the name, contact person, and access information for each member of the one-call notification system;
- C. notify the commission of the service area in which the one-call notification system operates;
- D. have a written coordination agreement with other one-call notification systems operating in New Mexico;
- E. keep a record of all locate requests, tickets, and clears for five years and make such records available to the commission upon request;
- F. provide monthly reports to the commission, no later than the tenth of each month, with the following information:
 - (1) average wait time for answered calls for the previous month;
 - (2) number of calls received for the previous month;
 - (3) number of tickets generated for the previous month;
 - (4) number of requests by type (regular, priority, emergency) for the previous month.
- G. report any changes in access information to the commission on or before the date the information will change;
- H. establish a registry of non-member UFOs that voluntarily provide their contact and underground facility information for excavation purposes;
- I. establish a positive response registry system; and

J. inform any person who calls with a complaint that he or she may file a complaint with the commission's pipeline safety bureau, and provide the commission's pipeline safety bureau access information, if the one-call system is unable to satisfactorily resolve the matter.

K. processing locate requests;

(1) A one-call notification system may hold a locate request in suspension until it is complete. The one-call notification system shall contact an excavator, project owner, or project engineer within three hours to request any missing information that prevents the one-call notification system or non-member UFO from processing the request.

(2) A one-call notification system shall process all complete locate requests within three hours of receipt. A one-call notification system shall deem locate requests received on a weekend or holiday, or after 4:00 p.m. on a working day, to have been received at 7:00 a.m. on the next working day and shall deem locate requests received before 7:00 a.m. on a working day to have been received at 7:00 a.m. on that working day.

(3) Upon receipt of a complete conference or locate request, a one-call notification system shall issue a ticket with a unique number to the requesting person as confirmation, and shall send a ticket to all members of the system that have underground facilities in the excavation area, or notify the members by telephone. A ticket shall become effective at the date and time a one-call notification system issues a ticket number; if the ticket is for a conference, the ticket shall be marked "wide area conference," "bid conference," or "design conference," as appropriate.

(4) Any person may contact the one-call notification system and request confirmation of damage reports, conferences, and locate requests.

[18.60.5.8 NMAC - Rp, 18.60.5.8 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.12 DESIGN AND BID LOCATE REQUESTS: A project owner or project engineer shall request information regarding the location of underground facilities for design projects or bids in accordance with either Subsection A or B of this section, but may not switch methods once having made an election unless the existing utilities cannot be located by the UFO(s) in accordance with the requirements of applicable laws.

A. Physical locates.

(1) A project owner or project engineer may request a design or bid locate from one-call notification systems and non-member UFOs.

(2) The one-call notification system and non-member UFOs for the intended excavation area shall issue a ticket marked "bid locate" or "design locate" as appropriate.

(3) UFOs shall physically mark or clear the location of underground facilities on the site through a positive response system within two full working days from the date of the ticket.

(4) If one or more underground facilities have not been marked and positive response has not been provided, a project owner or project engineer shall call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests, ideally within two hours.

~~(4)~~(5) Designers or bidders, as appropriate, shall capture data from the site within 10 working days from the end of the two day marking period.

~~(5)~~(6) A project owner or project engineer shall not request relocates or time extensions for a design or bid locate.

B. Conferences.

(1) A project owner or project engineer may request a design or bid conference a minimum of two working days prior to conference from the one-call notification system and non-member UFOs for the intended excavation area and provide the proposed date, time, and location for the conference.

(2) A UFO shall contact the project owner or project engineer within two working days of the issuance of the conference ticket and confirm the proposed conference schedule, and if necessary, make arrangements to reschedule the conference not to exceed five working days from the proposed conference schedule on the conference ticket. A UFO shall be physically represented at the scheduled design or bid conference.

(3) The one-call notification system for the intended excavation area shall process the request as provided in Subsection K of 18.60.5.8 NMAC.

(4) UFOs shall arrange to provide information to designers or bidders within a reasonable time following the conference, but not to exceed 10 working days.

(5) A project owner or project engineer and UFOs shall continue with utility coordination until the design is complete or bid for the project has been awarded and an excavator requests an excavation locate. [18.60.5.12 NMAC - Rp, 18.60.5.12 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.13 MARKING EXCAVATION SITES:

A. Excavators. As provided under Subsection B of 18.60.5.10 NMAC, excavators shall mark all proposed excavation sites in accordance with American public works association (APWA) standards to improve communication between the excavator and UFO. In assessing administrative penalties for violation of the Excavation Damage to Pipelines and Underground Utility Lines Law, Section 62-14-1 *et seq.* NMSA 1978 and this rule, the commission may consider whether and how well an excavator marked a proposed excavation site. Pre-marking a site in white indicates the actual excavation site (not limits of construction) and, therefore, will supersede marking instructions provided on locate requests and be used to determine alleged violations during staff investigations. When an excavator fails to pre-mark the actual excavation site, UFOs shall mark per the spotting instructions provided on the locate request and register a positive response indicating the site was not pre-marked.

B. UFOs.

(1) A UFO shall mark underground facilities for excavation purposes in accordance with the APWA standards.

(2) A UFO shall locate and mark its underground facilities within two full working days from the effective date of the ticket in accordance with Subsection A of 62-14-5 NMSA 1978.

(3) If a UFO determines it does not have underground facilities within the proposed limits of the excavation site, a UFO shall provide positive response to the one-call notification's positive response registry system and may write "clear" or "no underground facilities" and the UFO's name at the site in the appropriate color.

(4) The locate markings shall be valid for 15 working days from the end of the [~~two-day marking~~] advance notice period. For the purpose of excavation, a working day begins on the work to begin date and time stamped on the ticket and ends 15 working days from such date and time.

(5) A UFO shall provide appropriate positive response to the one-call notification's positive response registry system for all advance notifications, including wide area, design, bid, standard, and road maintenance locate requests or conferences.

(6) If a UFO fails to mark its underground facility in accordance with the requirements of applicable laws, the UFO may be liable to the excavator, project owner, and project engineer in accordance with Subsection C of 62-14-5 NMSA 1978.

[18.60.5.13 NMAC - Rp, 18.60.5.13 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.15 EXCAVATION PROCEDURES:

A. Pre-excavation. Before excavating, an excavator shall determine whether all underground facilities have been marked.

(1) If all underground facilities have been marked or cleared through a positive response system and the ~~two-working-day~~ advance notice marking period has expired, the excavator may begin excavating.

(2) If one or more underground facilities have not been marked and positive response has not been provided, an excavator shall, prior to commencing excavation, call the one-call notification system for verification that advance notice was transmitted to the UFO and to provide notice that the underground facilities have not been located or cleared via a warning locate request. UFOs shall promptly respond to warning locate requests ideally within two hours.

B. Excavation.

(1) If, while excavating, an excavator observes evidence that an unmarked underground facility may exist, the excavator shall, before excavating in the immediate area of such evidence:

(a) make a reasonable effort to identify and contact the UFO and wait until the UFO marks or clears the immediate area of the evidence; the UFO shall mark or clear the area within two hours of contact or as expeditiously as possible if the excavation site is in a rural area;

(b) expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(2) If excavation activity encroaches within 18 inches either side of a marking made by a UFO, an excavator shall, prior to excavating, expose the underground facility by non-mechanical means or mechanical vacuum excavation methods.

(3) If the exact subsurface location of the underground facility or utility cannot be determined by non-mechanical means or mechanical vacuum excavation methods as required in Subparagraph (a) of Paragraph (1) and Paragraph (2) of this Subsection above, the excavator shall contact the UFO directly and UFO shall work with the excavator to locate and expose the actual subsurface location of the underground facility or utility. If the UFO must resort to performing excavation to locate the facility, the UFO shall perform such excavation within five working days of notice from the excavator. If requested, the local one-call notification center shall provide the excavator with the contact telephone number of the UFO.

(4) If excavation activity cannot proceed without obliterating all or some of the markings made by a UFO, an excavator shall provide temporary offset marks or stakes to retain the information regarding the location of each UFO's underground facilities.

(5) The requirement to provide positive response for a facility does not apply to the homeowner of a residential property.

(6) The commission encourages excavators to notify the UFO when excavation activity will be within twenty-five feet of the actual utility marking provided or as agreed upon by a right of way encroachment agreement or permit for infrastructure identified by the UFO as critical (i.e., transmission and trunk line pipelines, fiber optic, power, 911, etc.).

C. **Temporary suspension of excavation activity.** If staff determines that an excavation activity is not in compliance with the requirements of this rule, and that continued noncompliance may result in injury to persons or damage to property, staff may suspend the excavation activity until the excavation activity is brought into compliance with the requirements of this rule and excavation conditions are safe.

[18.60.5.15 NMAC - Rp, 18.60.5.15 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.16 EMERGENCY EXCAVATION AND DAMAGE REPORTING PROCEDURE: This section applies whenever failure of or damage to underground facilities or public infrastructure requires emergency excavation as defined in Subsection E of 62-14-2 NMSA 1978 and excavation shall be promptly commenced, ideally within 24 hours.

A. **Excavators.** An excavator who damages an underground facility while excavating with mechanical or non-mechanical equipment shall exercise prudence and shall:

- (1) stop excavating immediately;
- (2) call 911 if appropriate and the operator of the damaged underground facility and 811 to report the damaged facility;
- (3) secure the site and direct people and traffic a safe distance away from the site of the damage;
- (4) not leave the scene until authorized by an emergency responder or the operator of the damaged underground facility; an excavator may leave the scene without such authorization only if the excavator has made reasonable, if unsuccessful, efforts to contact the affected UFOs and has safely secured the site;
- (5) not resume work within an unsafe distance of the damage until authorized by the operator of the damaged underground facility.

B. **Operators of failed or damaged underground facilities.** The operator of a failed or damaged underground facility shall exercise prudence and shall:

- (1) immediately respond to a report of damage or failure to its underground facilities and travel to the site;
- (2) prior to traveling to the site or upon arrival, call the one-call notification system for the excavation area to request an emergency locate;
- (3) make the site safe and get the emergency situation under control;
- (4) locate its own underground facilities as soon as practical, ideally within two hours;
- (5) begin remedial action to restore service as soon as practical, ideally within 24 hours; and
- (6) obtain a standard excavation locate ticket for repair work beyond resolution of the emergency situation.

C. **Operators of failed or damaged public infrastructure.** The entity responsible for the failed or damaged public infrastructure shall:

- (1) call the one-call notification system for the excavation area to request an emergency locate;
- (2) obtain an excavation locate ticket for repair work beyond resolution of the emergency situation.

- D. One-call notification system.** A one-call notification system shall upon request:
- (1) issue an emergency excavation notice which shall be valid until the emergency is resolved, or for 48 hours, whichever is longer;
 - (2) issue a notice of a reported damage to each affected UFO.
- [18.60.5.16 NMAC - Rp, 18.60.5.16 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.17 ABUSE OF THE LAW: A person shall be deemed to have willfully failed to comply with this rule or Chapter 62, Article 14 NMSA 1978 and shall be subject to the penalties in Section 62-14-8 NMSA 1978 if the person:

- A. requests a locate for an area that cannot reasonably be excavated in 15 working days;
- B. provides misinformation or withholds information regarding the size of an excavation area;
- C. requests locates that unduly burden a one-call notification system or UFO;
- D. requests a locate for fraudulent reasons;
- E. fails to process locate requests within the requisite timeframe;
- F. fails to mark, or provide positive response for its underground facilities within the requisite timeframe;
- G. fails to determine if all underground facilities have been marked or cleared;
- H. commences excavation prior to the expiration of the [~~two-day~~] advance notice period;
- I. obliterates markings at an excavation site without providing temporary offset marks or stakes;
- J. alters any record relating to excavation activity;
- K. fails to pre-mark the actual intended excavation route or site(s) as required;
- L. fails to report or file a report of damage within requisite time frame; or
- M. commits any other act that the commission determines violates Chapter 62, Article 14 NMSA 1978 or this rule.

[18.60.5.17 NMAC - Rp, 18.60.5.17 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.19 ALTERNATIVE DISPUTE RESOLUTION:

- A. The commission encourages owners and operators of underground facilities, project owners, project engineers, and excavators to privately negotiate and settle disputes arising from excavation damage to underground facilities and construction or design expenses related to improper underground facility location.
- B. In the event the parties are unable to resolve such disputes privately, any owner or operator of underground facilities, project owner, project engineer, or [~~any~~] excavator may request mediation or arbitration from the commission.
- C. Staff may participate in mediation or arbitration proceedings.
- D. In mediation and arbitration proceedings, persons shall be represented in accordance with the requirements of 18.60.4.11 NMAC.

[18.60.5.19 NMAC - Rp, 18.60.5.19 NMAC, 1/15/2019; A/E 6/7/2022]

18.60.5.22 WAIVER OR VARIANCE FROM RULE REQUIREMENTS:

- A. The commission may, in its discretion, waive or vary any requirement of this rule whenever the commission finds that such waiver or variance would be in the public interest.
- B. An excavator, project owner, project engineer, one-call notification system, or UFO that cannot meet one or more of the requirements of this rule may petition the commission for a waiver or variance. The petition shall be in writing and shall include:
 - (1) a list of those requirements which the excavator, project owner, project engineer, one-call notification system, or UFO wishes to have waived or varied;
 - (2) an explanation and description of the specific conditions which prevent the requirement from being met; and,
 - (3) a statement of steps already taken and to be taken, with projected time limits for each step, in attempting to meet the requirements.
- C. The commission may order a hearing on the merits of the petition.
- D. An excavator, project owner, project engineer, one-call notification system, or UFO shall be required to comply with requirements it has petitioned to have waived or varied until the commission has issued an order on the merits of the petition, unless the commission or its designee grants an interim waiver of or variance from one or more of the requirements that are the subject of the petition.

[18.60.5.22 NMAC - Rp, 18.60.5.22 NMAC, 1/15/2019; A/E 6/7/2022]

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing **Final Order Adopting Amendments to Commission Rule 18.60.5 NMAC** was sent to the following parties on the date indicated below:

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DATED this 5th day of May, 2022.

NEW MEXICO PUBLIC REGULATION COMMISSION

/s/ Isaac Sullivan-Leshin, electronically signed

Isaac Sullivan-Leshin, Law Clerk

Isaac.sullivan-leshin@state.nm.us