

your dog or cat appears ill, you should have it examined by a licensed veterinarian of your choice at the earliest possible time.

...
12.-13. (No change.)

PUBLIC UTILITIES

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BOARD OF PUBLIC UTILITIES

Underground Facilities: One-Call Damage Prevention System

Readoption: N.J.A.C. 14:2

Proposed: October 6, 2014, at 46 N.J.R. 2011(a).

Adopted: February 11, 2015, by the New Jersey Board of Public Utilities, Richard S. Mroz, President, Joseph L. Fiordaliso, Mary-Anna Holden, Dianne Solomon, and Upendra J. Chivukula, Commissioners.

Filed: February 11, 2015, as R.2015 d.038, **without change**.

Authority: N.J.S.A. 48:2-13 and 48:2-73 et seq.

BPU Docket Number: AX14070647.

Effective Date: February 11, 2015.

Expiration Date: February 11, 2022.

Summary of Public Comments and Agency Responses:

The following commenters submitted timely comments on the notice of proposal:

Margaret N. Gallos, Executive Director, Association of Environmental Authorities of New Jersey (AEA);

Suzana Duby, The New Jersey Chapter of the National Association of Water Companies (NAWC-NJ);

Mary Patricia Keefe, Elizabethtown Gas, on behalf of Elizabethtown Gas, South Jersey Gas Company, New Jersey Natural Gas Company (GDCs);

Carol Walczyk, American Water Works Association New Jersey (AWWANJ); and

Alexander C. Stern, Esq.- Public Service Electric and Gas Company; Michael J. Connolly, Esq., Windels Marx Lane & Mittendorf on behalf of Jersey Central Power and Light; Philip J. Passanante, Esq., Atlantic City Electric Company; and John J. Carley, Esq., Rockland Electric Company (EDCs).

1. COMMENT: The requirements of N.J.A.C. 14:2-4.2 are unrealistic and unreasonable in that they require water companies to mark facilities between the curb and a customer's meter. Unlike other utilities (for example, electric and gas companies which legally own and actually control the underground facilities to the customer's building), a water company's ownership ends at the curb where the customer's service lines are connected to the utility's system. The customer, and not the water company, actually owns and controls the service line and is responsible for the location and installation of the service line that extends from the curb to the meter within the customer's building or buildings. This is particularly the case with facilities within commercial and industrial complexes, such as shopping centers and industrial parks where the privately owned underground service lines may be diverse or physically inaccessible. The commenters disagree with the regulation that states that the utility and not the customer who actually owns and controls the location of the underground facility is "deemed to control" or better able to determine the location of such facilities under these circumstances is patently unrealistic and unreasonable. (AEA, NAWC-NJ, and AWWANJ)

RESPONSE: There is a risk to underground facilities, including water facilities, that the Legislature has sought to protect through the Underground Facility Protection Act (UFPA) and this chapter is designed to effectuate. Transferring this responsibility from an operator to a homeowner would not serve this public policy. Additionally, Federal standards for state one-call programs call for the inclusion of all underground facility operators. Under the One-Call statute, if a utility

delivers metered service, it controls the operation of the utility line up to (and often including) the meter, regardless of who owns the line. This is evidenced by the utility's authority to prosecute any person who taps into this line to divert utility service. Since the utility controls the line, it is the underground facility operator who is responsible for marking the facility under the One-Call program. This is a sensible policy because residential utility lines on the utility's side of the meter generally have more capacity than customer-controlled utility lines on the customer's side of the meter. Therefore, the risk posed by an excavator hitting the utility controlled line is much greater than the risk for a smaller, customer-controlled line behind the meter. This distinction applies to both residential and non-residential facilities. If a large commercial utility customer has installed underground utility lines on its side of the meter, the customer is responsible for locating those lines, not the utility. As such, the Board of Public Utilities (Board) declines to adopt the recommended change.

2. COMMENT: The customer-owned service line is most often constructed of non-metallic material, such as PVC or similar plastic substances, which are not readily traceable by normal detection equipment. (AEA and AWWANJ)

RESPONSE: Non-metallic water pipe or non-metallic water distribution facility mark-out exemptions are addressed in N.J.S.A. 48:2-81 and N.J.A.C. 14:2-4.1(b). Additionally, the National Standard Plumbing Code, which was adopted as the New Jersey plumbing subcode pursuant to N.J.A.C. 5:23-3.15, requires that non-metallic service lines installed contain a tracer wire. As such, the Board declines to adopt the recommended change.

3. COMMENT: Water Companies lack property or access rights on private property where service lines are located. Nor does it possess any easement, express or implied, to enter upon the customer's premises to make the required mark-outs. And no such right can be created by a regulation that simply declares that they are "deemed to control" the customer's lines on the customer's property. The regulation, in effect, places the water company in the position of a trespasser exposing it to potential additional liability and corresponding expense to its ratepayers. (AEA, NAWC-NJ, and AWWANJ)

RESPONSE: Pursuant to the Board's rules at N.J.A.C. 14:3-3.6 and 3A.1(a)5i, a utility shall have the right to reasonable access to a customer's premises and may discontinue service in appropriate circumstances if access is refused. Additionally, utility providers routinely access customer premises, including in response to emergencies. As such, the Board declines to adopt the recommended change.

4. COMMENT: The regulation imposes an obligation on water companies and their rate-payers disproportionate to the threat to public safety resulting from damage to the underground service lines located on private property. The safety factor does not pertain to water facilities to the same extent as it does to other utility services, such as gas or electric lines. Compare, for example, the results of a hit to a 5/8-inch water main with that to an electric or natural gas line. In the former case, there is no realistic threat to the public safety; in the latter, serious property damage and/or bodily injury is a very likely result. On the other hand, the costs to ratepayers of both public and private systems to comply with the regulation are potentially extraordinary. In 2008, New Jersey American Water Company (NJAWC), which performs about 195,000 mark-outs per year, calculated increased compliance costs of approximately \$2.3 million in addition to liability exposure of unknown magnitude. And United Water Company projected increased costs for contractor's services for it and its subsidiaries of approximately \$140,000. The costs associated with compliance for all water companies in the State will exceed \$10,000,000 with a correspondingly adverse impact upon ratepayers. (AEA, NAWC-NJ, and AWWANJ)

RESPONSE: Water leaks introduce risks into the underground environment. Board staff has investigated incidents in which it has concluded that unmarked water underground facilities contributed to the loss of life, property damage, and injuries to the public. The State of New Jersey requires all underground facilities operators to participate in the One-Call program. As such, the Board declines to adopt the recommended change.

5. COMMENT: Under the current construct of N.J.A.C. 14:2-4.2(c), water companies are left exposed to significant legal liability for

attempting to comply with this rule. There is no provision in the rule that allows a utility not to mark-out a customer-owned facility when a utility is unable to locate this facility despite utilizing its best efforts and resources at its disposal.

While it is completely reasonable for a water company to incur the risks associated with mark-outs of facilities it owns and controls, including the risks of being sued, it is not reasonable to incur the risks of liability for mark-outs the water company does not own or control but for an artificial and illogical construct of "control" as defined in N.J.A.C. 14:2-4.2(c). The commenter further asserts that its position is supported by Rate Counsel's expert engineering witness in Docket Nos. WR08010020 and WR11070460.

Based on the foregoing, this commenter requests that the Board modify N.J.A.C. 14:2-4.2(c) and eliminate the requirement for water utilities to mark-out customer-owned facilities. (NAWC-NJ)

RESPONSE: This comment is premised on the commenter's position that it does not control the underground facilities. See the Response to Comment No. 1 regarding utility control of the line.

6. COMMENT: The incidents of damage to water facilities on private property do not justify the requirement of private property mark-outs by water companies. The number of actual customer side hits by water utilities has been *de minimis*. And even with the projected expenditure of millions of dollars to comply with the regulation as proposed, it will not be possible to prevent all damage to customer side facilities due to the wide spread use of untraceable plastic pipe for these installations. Based upon the above, the cost of compliance to be incurred by all water purveyors if the regulation is readopted as proposed substantially outweighs any possible benefits that will result from its application. (AEA and AWWANJ)

RESPONSE: See the Response to Comment No. 4.

7. COMMENT: The proposed regulation is inconsistent with the enabling legislation as demonstrated by the fact that 1) no such customer side mark-outs were required from 1994 when the UFPA was enacted and 2007 when the Board's regulation went into effect; 2) if the UFPA already provided for customer side mark-outs, why was the 2007 regulation with its "deemed to control" language necessary; and 3) the property owner who owns the facility and not the water utility is the "operator" as defined in the UFPA. It follows that the "deemed to control" language of the regulation is totally inconsistent with the express language of the regulation's underlying enabling statute and is therefore *ultra vires*. (AEA and AWAANJ)

RESPONSE: It has always been the companies' obligation to mark out lines they owned, operated, or controlled. Board staff's 2007 clarification resolved industry confusion.

8. COMMENT: There is no specific guidance in the regulations concerning the duration an emergency mark-out request remains valid and in force. Referencing N.J.A.C. 14:2-3.1(a) and (c), these sections make no distinction between notifications made under N.J.A.C. 14:2-3.1(a) or 3.5 - the emergency excavation notification requirement. One might interpret the rules as having the emergency notification also valid for 45 business days. If the mark-out is no longer valid when the emergency no longer exists, then the excavator would not be allowed to return to the site to complete work until a routine ticket becomes valid three business days later. The facility operator must also return and remark the freshly marked facilities under this premise. The GDCs urge the Board to provide clarity of this issue in the rules. A 45-business day life applied to emergency notifications would allow for uninterrupted job completion, which enhances the public safety. It would also simplify issues of rule compliance and liability and eliminate duplicate mark-out requests and responses for the same work location. (GDCs and EDCs)

RESPONSE: An emergency mark-out request is only valid when an emergency, as defined in N.J.S.A. 48:2-75, exists. Under an emergency mark-out request, excavation may begin immediately and operators are required to mark its facilities within two hours of the request. Included in the emergency response is an immediate repair related to the emergency. However, once the emergency no longer exists and the excavator ceases operations in response to the emergency, a valid routine mark-out ticket is required for subsequent excavation. Emergency mark-out requests present circumstances that are unique from a routine mark-out request and the emergency response may alter the ground and configuration of

the underground infrastructure. Therefore, the Board believes that a distinction between routine and emergency mark-out requests is necessary to protect the public and consistent with the applicable statutes. The Board will continue to review the rules to determine whether clarification of the rules is required in a future rulemaking.

9. COMMENT: The statutory authority of N.J.S.A. 48:2-84 includes the provision that allows excavation or demolition to be undertaken in response to an emergency, provided that the One-Call Damage Prevention System is notified at the earliest reasonable opportunity. Yet, many emergency locations requests that meet the definition of an emergency had apparently been known to exist for some time. The companies have received emergency mark-out requests that are almost a mile long. Typically, these are planned roadway repairs or repairs of underground facilities to correct deterioration without an actual release or hazard that had been known for some time. These often could have been executed with adherence to the routine three-business-day waiting period. Such unreasonable emergency locate requests strain resources. We suggest the Board discourage such practices with length restrictions and questions regarding the emergency conditions to ensure notification occurred at the earliest opportunity as required by code. (GDCs)

RESPONSE: An emergency mark-out request is only valid when an emergency, as defined in N.J.S.A. 48:2-75, exists. Planned roadwork or facility repairs do not constitute an emergency unless an emergency as defined in N.J.S.A. 48:2-75 exists. The Board discourages abuse of emergency mark-out requests and reviews the basis and scope of such requests. The Board notes that if the initial emergency mark-out request is determined to be invalid, the Board may deem the entire ticket invalid. The Board further encourages excavators to consider the scope of the emergency mark-out when making a mark-out request.

10. COMMENT: Operators are required to dispatch a facility locator within two hours of receiving an emergency locate request as though responding to a hazardous incident. In most cases, this is appropriate. In some instances the emergency situation involves a service interruption or other circumstance where excavation will not take place until the next day or day after. The response requirement in these instances should be adjusted to two hours before the indicated start time. (GDCs)

RESPONSE: Board staff feels the existing rule is consistent with protecting public safety. Nonetheless, if excavation in response to an "emergency" will not commence for several days after the mark-out request is made, consideration should be given to whether the request in fact constitutes an "emergency" under N.J.S.A. 48:2-75. See also the Response to Comments 8 and 9.

11. COMMENT: The Commenter has learned that when an immediate mark-out is requested, it is beneficial that the excavator be onsite to provide guidance to the locator by identifying where the emergency excavation is to be made. We recommend the One-Call Center advise the excavator to have an authorized representative onsite for this purpose when practical. (GDCs)

RESPONSE: It appears that the commenter is referring to an "Emergency mark-out." Board staff believes that cooperation between the excavator and operator is always beneficial, however, even in the case of an emergency, an operator is required to mark-out whether or not an excavator is on site. See also the Response to Comments 8, 9, and 10. The Board will consider whether additional amendments are appropriate in the future.

12. COMMENT: The Board's efforts to improve damage reporting are supported. The commenter advocates appropriate rule revisions to reflect the current practice of electronic reporting. (GDCs)

RESPONSE: The Board appreciates this comment in support of its rules.

13. COMMENT: Excavator white lining the work area saves needless effort and marking in areas that are known not to be included in the work. This is especially true for long mark-outs associated with road sign installation, including temporary road work advanced warning signs and soil borings. In these cases, mark-outs for thousands of feet of entire roadway are being requested for only a few small excavations in limited areas. The commenter, therefore, recommends that white lining be required. (GDCs)

RESPONSE: The Board believes that encouraging, but not mandating, white paint for small or limited excavation sites is the best way to

minimize labor and unsightly paint marks, while maximizing the underground facility operator's ability to identify small mark-out sites. N.J.A.C. 14:2-3.2(d) requires excavators to limit all sites to the minimum size necessary to safely accommodate the planned excavation or demolition. Therefore, the Board has determined not to make the recommended change.

14. COMMENT: Commenter proposes increasing the number of days from 15 to 30 for providing a detailed written incident report. The commenter believes that accumulation of all significant facts is more reasonably, accurately, and comprehensively accomplished without the need for follow-up or supplemental reporting within 30 days of the incident. Furthermore, this proposed change would not in any way compromise the Board's administrative, enforcement, or other important objectives while allowing the underground facility operator a small degree of additional flexibility in submitting the important report. (EDCs)

RESPONSE: The Board believes that the current 15-day requirement appropriately balances the need for prompt reporting with an operator's ability to collect relevant information. While supplemental reporting is sometimes required, the Board believes that the 15-day reporting requirement is appropriate given the Board's responsibility to investigate and enforce the Underground Facilities Protection Act.

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-22 through 24 require State agencies that adopt, readopt, or amend State rules that exceed any Federal standards or requirements to include in the rulemaking document a Federal standards analysis. The readopted rules do not exceed any Federal standards. Under the Federal Pipeline Safety Act (Act), 49 U.S.C. §§ 60101 and 60105, certain Federal funding for the State is conditioned on the implementation of a State One-Call program. The Federal Pipeline Safety Act does not require that a state implement a One-Call program. However, if the state implements such a program and other pipeline safety programs, the Act provides funding to the state for these programs.

Full text of the readopted rules can be found in the New Jersey Administrative Code at N.J.A.C. 14:2.

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BOARD OF PUBLIC UTILITIES

Notice of Readoption

All Utilities

Readoption: N.J.A.C. 14:3

Authority: N.J.S.A. 48:2-13; 48:2-16, 16.1 through 16.4, 17, 20, 23, 24, 25, and 27; 48:3-2.3, 3, 4, and 7.8; and 48:19-17.

Authorized By: New Jersey Board of Public Utilities, Richard S. Mroz, President, Joseph L. Fiordaliso, Mary-Anna Holden, and Dianne Solomon, Commissioners.

BPU Docket Number: AX15010032.

Effective Date: February 11, 2015.

New Expiration Date: February 11, 2022.

Take notice that pursuant to N.J.S.A. 52:14B-5.1.b, the rules at N.J.A.C. 14:3 will expire on April 10, 2015. The rules provide basic requirements for all utilities regulated by the Board, which include water, wastewater, electric, gas, and telephone utilities.

A summary of the subchapters of N.J.A.C. 14:3 follows:

Subchapter 1. Definitions and General Provisions

N.J.A.C. 14:3-1.1 contains definitions of general applicability.

N.J.A.C. 14:3-1.2 sets forth the scope and purpose of the subchapter.

N.J.A.C. 14:3-1.3 addresses requirements for tariffs.

Subchapter 2. Plant

N.J.A.C. 14:3-2.1 addresses the construction of utility plant and facilities including construction of extensions.

N.J.A.C. 14:3-2.2 requires utilities to inspect any work performed by the utility's contractors to ensure compliance with safe practices.

N.J.A.C. 14:3-2.3 sets forth requirements for equipment mounted on utility poles.

N.J.A.C. 14:3-2.4 requires utilities to display their names on their structures.

N.J.A.C. 14:3-2.5 requires that utilities place identifying marks on their equipment.

N.J.A.C. 14:3-2.6 requires utilities to maintain their facilities.

N.J.A.C. 14:3-2.7 requires utilities to inspect their facilities and take corrective action where necessary.

N.J.A.C. 14:3-2.8 addresses work by non-utility personnel on or around utility facilities and requires that only utility employees or other qualified persons work on utility equipment when the equipment is in use serving customers.

Subchapter 3. Service

N.J.A.C. 14:3-3.1 sets forth a utility's basic duty to provide safe, adequate and proper service and conserve resources.

N.J.A.C. 14:3-3.2 pertains to customer applications for utility service.

N.J.A.C. 14:3-3.3 sets forth information that the utility is required to provide to customers and describes means of providing that information.

N.J.A.C. 14:3-3.4 sets forth provisions concerning deposits the utility may require from applicants for service.

N.J.A.C. 14:3-3.5 sets forth provisions concerning interest on deposits and the return of deposits to customers.

N.J.A.C. 14:3-3.6 sets forth provisions concerning the utility's right to access to a customer's premises.

N.J.A.C. 14:3-3.7 addresses utility responsibilities regarding interruptions of service.

N.J.A.C. 14:3-3.8 addresses utility responsibilities regarding the scheduling of service calls.

Subchapter 3A. Discontinuance and Restoration of Service

N.J.A.C. 14:3-3A.1 governs the basis for a utility to discontinue a customer's service.

N.J.A.C. 14:3-3A.2 governs discontinuance of a customer's service specifically because of nonpayment of charges.

N.J.A.C. 14:3-3A.3 governs utility notice of discontinuance of a customer's service for nonpayment.

N.J.A.C. 14:3-3A.4 provides additional notice requirements for discontinuance of residential and special customers.

N.J.A.C. 14:3-3A.5 sets forth the conditions of the Winter Termination program applicable to residential gas and electric service.

N.J.A.C. 14:3-3A.6 governs the discontinuance of electric, gas, water, and wastewater service to tenants.

N.J.A.C. 14:3-3A.7 governs notice to municipalities of discontinuance of residential gas and electric service.

N.J.A.C. 14:3-3A.8, governs discontinuance of basic residential telephone service.

N.J.A.C. 14:3-3A.9 provides conditions for restoration of service after discontinuance.

Subchapter 4. Meters

N.J.A.C. 14:3-4.1 addresses ownership of meters and other utility equipment.

N.J.A.C. 14:3-4.2 addresses the location of meters.

N.J.A.C. 14:3-4.3 includes definitions of terms used in the subchapter.

N.J.A.C. 14:3-4.4 sets forth the requirements for the testing of equipment that a utility uses to test customer meters, including equipment used to calibrate the meter testing equipment.

N.J.A.C. 14:3-4.5 provides for a utility or a Board inspector to test a meter at the customer's request.

N.J.A.C. 14:3-4.6 addresses the adjustment of charges for meter error.

N.J.A.C. 14:3-4.7 requires meter test reports and recordkeeping.

N.J.A.C. 14:3-4.8 governs timing and charges for meter replacement.

Subchapter 5. Contacting the Utility

N.J.A.C. 14:3-5.1 governs the location of utility offices.

N.J.A.C. 14:3-5.2 governs how a utility must make itself accessible to customers.