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March 12, 2014

Mr. David Ferguson
Pipeline Safety Division
Railroad Commission of Texas
1701 North Congress
Austin, Texas 78701

Re: Drafted Proposed Amendments to Chapter 18

Dear Mr. Ferguson:

The following comments are submitted in response to the Railroad Commission of Texas' Discussion Draft of Changes to Texas Administrative Code, Title 16, Chapter 18.

In 18.1(d)(2) the commission exempts hand digging at a depth of 12 inches or less. This is in contradiction of Texas Utilities Code, Title 5, Chapter 251 which defines excavate as the use of "explosives or a motor, engine, hydraulic or pneumatically powered tool, or other mechanized equipment of any kind and includes augering, backfilling, boring, compressing, digging, drilling, dragging, dredging, grading, mechanical probing, plowing in, pulling in, ripping, scraping, trenching, and tunneling to remove or otherwise disturb soil to a depth of 16 or more inches". This definition creates an explicit exemption for all hand digging and an exemption for mechanical excavation to a depth of 16 inches. TUC 5, 251 regulates excavation of all utilities in the State of Texas. The proposed change in 18.1(d)(2) would extend regulation by the commission over utilities it has no statutory authority to regulate.

This proposed change would adversely impact every aspect of the excavation process and create chaos throughout the state. Housley Communications, Inc. places service drops for a number of telephone and cable providers throughout the state. The specifications of these contracts require the placement of the cable at depths from 6 inches to 12 inches. Under the current statute, these activities are exempt from one call notification. Should this draft be adopted, all companies placing service drops would be required to obtain locates for every order received. Our company places approximately 70,000 service drops each year. Adding an estimated 100,000 locate requests for service drops alone to a system that is already struggling to meet the needs of excavators and utility operators would have disastrous consequences. It is already a common event for locaters, both company and contract, to exceed the required 48 hours to locate utilities. In rural areas 3 to 5 days for a response is not uncommon.

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In 18.3(h) the commission seeks to define and limit the scope of a line locate ticket to ½ mile within a single county. Again, the commission is exceeding its statutory authority. This change would affect all utilities and one call notification centers. The commission does not regulate all utilities in Texas nor does it have authority over notification centers. The unintended consequences of this requirement would be to significantly increase the number of locate requests sent to operators. This increases costs for all operators and would further strain a system that struggles to respond in a timely manner.

In 18.3(k) the provision suggests an excavator making an emergency locate request wait at least 2 hours before beginning excavation, but shall provide notice before beginning excavation. This appears to be an unnecessary requirement. Waiting at least 2 hours creates added downtime for the excavator and in some cases may endanger the general public and the excavator's employees. The provision in TUC Title 5, Chapter 251.155(b) and (c) that allows the excavator to begin excavation immediately as long as reasonable care is taken and notify the notification center as soon as practical seems to be logical and in the best interest of all involved.

The commission has added language that requires an excavator notify the operator of the damaged facility in addition to the notification center. This places an unnecessary burden on excavators. An adequate procedure already exists for notification through the notification centers. It could be argued that this is another mechanism to fine excavators. An excavator could be fined for failure to notify the operator of a damage and the excavator now has the burden to prove they did not possess contact information for the operator.

The same requirement to notify the operator as well as the notification center is located in 18.11(b). Again, this appears to be an unnecessary addition to a process that is well established and quite efficient. Extending the time to complete the TDRF from 10 days to 30 calendar days is a welcome change for all stakeholders, in light of real world conditions.

This latest draft from the commission appears to be a blatant attempt at regulatory over-reach. Burdening operators, locaters, notification centers and excavators with additional regulation is counterproductive to preventing damages. Since the inception of the Chapter 18 Underground Pipeline Damage Prevention Regulations there has been little outreach on the part of the commission to educate or begin a dialog with the excavator community about these regulations. But the commission has been happy to levy and collect millions of dollars in fines associated with Chapter 18 violations. Damage prevention is a cooperative effort of all stakeholders and from my perspective, cooperation on the part of the commission is lacking. I would, therefore, call for the rejection of all changes contained in the current draft.

Respectfully,



Stacy L. Elms
Vice President of Risk Management
Housley Group

Cc: David R. Meek, Housley Group
Mary Ross McDonald, Pipeline Safety Division
Barry T. Smitherman, Chairman
David Porter, Commissioner
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