

Danielle M. McGrath, President

Mindy Westrick Brown, Vice President

- ▶ AES Indiana
- ▶ Boonville Natural Gas Corp.
- ▶ CenterPoint Energy
- ▶ Citizens Energy Group
- ▶ Community Natural Gas Co., Inc.
- ▶ Duke Energy Indiana
- ▶ Fountaintown Gas Co., Inc.
- ▶ Indiana Michigan Power
- ▶ Indiana Natural Gas Corp.
- ▶ Midwest Natural Gas Corp.
- ▶ Northern Indiana Public Service Co.
- ▶ Ohio Valley Gas Corp.
- ▶ South Eastern Indiana Natural Gas Co., Inc.
- ▶ Sycamore Gas Co.

September 9, 2022

Via Email – urccomments@urc.in.gov
Jeremy Coumeau
Assistant General Counsel
Indiana Utility Regulatory Commission
101 West Washington Street, Suite 1500E
Indianapolis, IN 46204

Dear Jeremy,

Thank you for the opportunity to provide comments on the proposed rule changes to 170 IAC 5-5. The Indiana Energy Association (IEA) comments and proposed changes are summarized below and reflected in the attached redline of the proposed rule.

- 170 IAC 5-5-1.2(3) – recommend deletion of the phrase “or carrier pipe, if applicable” because accurate information about carrier pipes may not be available to the operators and could make the utility liable for damage to a carrier pipe that it did not know existed.
- 170 IAC 5-5-1.3(b) – recommend rewording the sentence to clarify meaning because as written it could be read to allow an excavator more than two full working days to complete markings, and it could also be read to allow excavation to start before full markings information has been provided if partial markings are present. The proposed language clarifies that excavator must wait two full working days unless operator supply the information prior to that date.
- 170 IAC 5-5-2(a) and (b) – recommend maintaining the current 30-day deadlines and not shortening to 21 days. Operators are in agreement that the 30-day deadline is already a significant challenge and that 21 days is not workable. Having a 21-day deadline would cause operators to request an extension almost every time.
- 170 IAC 5-5-2.1(a)(2) – recommend replacing requirement of signed, written agreement with documented notification by the operator setting forth a rescheduled deadline to provide location information. It is not reasonable to require the operator to reach agreement with the excavator unless there are rule creating a formal process to reach such an agreement and requiring the excavator to actively participate in that process by monitoring and responding to communications from the operator.
- Operators strive to mark facilities as quickly as possible and reaching an agreement with the excavator will not shorten that timeframe. Further,

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operators estimate that having to reach agreement with the excavator will double the cost of compliance with the rule. There is also concern that such a signed, written agreement could create a legally binding contract between the operator and excavator and that the excavator could involve the operator in litigation to “enforce” the terms of the agreement, which would not seem to be the intent of the proposed change.

- 170 IAC 5-5-2.1(c)(3) – recommend deleting because on a very large project, such as a highway relocation where a locate request may cover many miles, the operator would not have time to attempt a locate and mark the DO NOT DIG for the entire project within the two-day timeframe.
- 170 IAC 5-5-2.2 – recommend changing Clearance Zone to Tolerance Zone. Tolerance zone is used in the national standard, and clearance zone has a different meaning in electric line work and could be confusing. Also recommend some additional paralleling the rule definition to the statute definition.
- 170 IAC 5-5-2.3(c) – recommend deleting because section (c) is superfluous.

I am available should you have any questions regarding our written comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mindy Westrick Brown', with a stylized, cursive script.

Mindy Westrick Brown

Attachment

**TITLE 170 INDIANA UTILITY REGULATORY COMMISSION
170 IAC 5-5**

Draft Proposed Rule
LSA Document #22-____
IURC RM #22-03

DIGEST

Amends 170 IAC 5-5-1, 170 IAC 5-5-2, 170 IAC 5-5-3, 170 IAC 5-5-4 to make various updates to definitions, add definitions for re-mark, job extension, and ~~second~~ **additional** notice tickets, to modify the procedural timeline for resolution of excavation damage cases, to require account information on the IURC website, and to require a publicly available penalty schedule from the UPPAC.

Adds 170 IAC 5-5-1.1, 170 IAC 5-5-1.2, 170 IAC 5-5-1.3, 170 IAC 5-5-2.1, 170 IAC 5-5-2.2, and 170 IAC 5-5-2.3 to define two full working days in which an operator shall provide location information, to specify the expiration date and time of 811 tickets, to require markings indicating the size and type of underground pipelines and infrastructure, to define compliance methods for notifying excavators under IC 8-1-26-18(k), to define the **tolerance zone** for round facilities, and to require positive response to excavators.

Commented [EJA1]: Should remain "tolerance zone." See related comment below.

Effective 30 days after filing with the Publisher.

SECTION 1. 170 IAC 5-5-1 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-1 Definitions

Authority: IC 8-1-26-26, IC 8-1-26-16

Affected: IC 8-1-26

Sec. 1. (a) The definitions in ~~IC 8-1-26, where applicable,~~ and this section apply throughout this rule.

(b) "811 ticket" means a notice of excavation or demolition as described by IC 8-1-26-16.

(c) "Account" has the same meaning as set forth in IC 8-1-26-1.3.

(d) "Advisory committee" means the underground plant protection advisory committee has the same meaning as set forth in IC 8-1-26-1.5.

(e) "Association" has the same meaning as set forth in IC 8-1-26-3.

~~(b)~~**(f) "Commission" means the Indiana utility regulatory commission.**

(g) "Damage" has the same meaning as set forth in IC 8-1-26-4.

(h) "Demolish" has the same meaning as set forth in IC 8-1-26-5.

(i) "Excavate" has the same meaning as set forth in IC 8-1-26-6.

(j) "Pipeline facilities" has the same meaning as set forth in IC 8-1-26-11.2.

(k) "Other materials" as referenced by IC 8-1-26-6 includes, but is not limited to, the following:

- (1) Shrubs, trees, timber, and similar brush.
- (2) Posts and fencing.
- (3) Poles.
- (4) Stakes.

(l) "Operator" has the same meaning as set forth in IC 8-1-26-10.

~~(m) "Pipeline safety division" means the pipeline safety division of the commission. or the pipeline safety division's publicly noticed consultant.~~

(n) "Job Extension ticket" means an 811 ticket that references a previous 811 ticket with an identical scope and is treated as an 811 ticket in all respects.~~is requested to extend the expiration date of a current, unexpired dig ticket, and does not include a re-mark ticket or a second notice ticket.~~

(o) "Re-mark ticket" means an 811 ticket ~~that is requested because the markings from the most recent dig in which an excavator affirms that markings from a previous 811 ticket have become illegible, as required under IC 8-1-26-20(a)(3)(b). The re-mark ticket makes the previous 811 ticket invalid as of the notice to the association.~~

(p) "~~Second-Additional notice ticket~~" means a request for the association to notify operators that the markings from an a previous 811 ticket; ~~that is requested because the markings from the most recent dig ticket:~~

- (1) were not provided, or
- (2) were provided but there is visual evidence of an unmarked pipeline underground facility in the area of the excavation or demolition.

An additional notice does not modify the expiration date of the previous 811 ticket.

(q) "Training" for purposes of IC 8-1-26-23(h)(2) means training provided by the commission, the pipeline safety division, or a person or entity approved by the commission.

~~(r)~~ "Working day" has the same meaning as set forth in IC 8-1-26-12.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA)

SECTION 2. 170 IAC 5-5-1.1 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.1 Deadline to Supply Marking Information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-16, IC 8-1-26-18, IC 8-1-26-21

Sec. 1.1. After an 811 ticket is submitted, an operator shall supply the information required by IC 8-1-26-18 not later than 7:00 a.m., eastern ~~time standard time or eastern daylight savings time,~~ as applicable in Greenwood, Indiana, on the next working day after the elapse of two full working day periods from 7:00 a.m. to 6:00 p.m.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.1)

SECTION 3. 170 IAC 5-5-1.2 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.2 Location and description of underground facilities

Authority: IC 8-1-26-26

Affected: IC 8-1-26-16, IC 8-1-26-18, IC 8-1-26-21

Sec. 1.2. An operator required to supply ~~to the~~ location and description of the underground facilities under IC 8-1-26-18 shall, as part of the description, include the following:

(1) A written description on the ground near the underground facility or in another manner that ensures the party performing the excavation or demolition receives the description.

(2) For pipeline facilities that are service lines,

~~(A) an indication the underground pipeline facility is a service line;~~ and

~~(B) the material type of the service line.~~

(3) For pipeline facilities two (2) inches in diameter and larger,

(A) the diameter, and

(B) material type.

of the pipeline facility being located ~~or carrier pipe, if applicable.~~

~~(4) For electric underground facilities, the voltage level of the facility being located.~~

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.2)

Commented [EJA2]: Issue is accuracy of information available to operators regarding carrier pipe. With this addition, operators could be liable for damage to carrier pipe that they did not know existed. IEA Prefers to strike carrier pipe portion.

SECTION 4. 170 IAC 5-5-1.3 IS ADDED AS FOLLOWS:

170 IAC 5-5-1.3 Expiration of 811 Tickets

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21, IC 8-1-26-16, IC 8-1-26-18

Sec. 1.3. (a) An 811 ticket expires at midnight, local eastern time standard time or eastern daylight savings time, as applicable in Greenwood, Indiana, at the site of the excavation or demolition, twenty (20) calendar days after the date the notice is submitted to the association under IC 8-1-26-16.

~~(b) A person responsible for the excavation or demolition may commence work or continue work after obtaining a job extension ticket only if the following circumstances apply:~~

~~(1) The markings from the current, unexpired 811 ticket have not become illegible;~~

~~(2) There is no evidence of an unmarked pipeline facility in the area of the excavation or demolition.~~

~~(c) A job extension ticket expires at midnight, local time at the site of the excavation or demolition, twenty (20) calendar days after the date on which the job extension ticket is submitted.~~

~~(d)~~(b) A person responsible for the excavation or demolition may not commence or continue work after calling in a re-mark ticket until after the elapse of two full working days, unless the operators of pipeline facilities supply the information required by IC 8-1-26-18 prior to the elapse of two full working days.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-1.3)

SECTION 5. 170 IAC 5-5-2 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-2 Notification of violations of IC 8-1-26

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2. (a) Any person or entity may ~~An operator of a pipeline facility shall~~ report a violation ~~damage~~ to a pipeline facility by providing the pipeline safety division with written or electronic notice of the violation ~~damage within 30 days of becoming aware of the damage~~ unless an extension is approved in writing by the director of the division.

~~(b) All violations shall be reported to the commission within thirty (30) days of a person becoming aware of the circumstances constituting the violation.~~

~~(b) An operator of a pipeline facility shall respond to a request for provide information about a damage within 30 days of a request after notice that a case number has been assigned by the pipeline safety division, unless an extension is approved in writing by the director of the division.~~

(c) a person may report a violation to the pipeline safety division by providing written or electronic notice of the circumstances giving rise to a violation.

~~(e)(d)~~ The pipeline safety division shall maintain, or cause to be maintained, a database of all reports provided to the pipeline safety division. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-2; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA*)

Commented [BS3]: IEA Operators in agreement that 30 days is already a challenge to meet. 21 days is not workable. If 21 days, would require operators to request extension almost every time.

Commented [BS4]: Same issue as above.

SECTION 6. 170 IAC 5-5-2.1 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.1 Notice of inability to provide locate information

Authority: IC 8-1-26-26

Affected: IC 8-1-26-21

Sec. 2.1. (a) The notice under IC 8-1-26-18(k) shall be provided in one of the following ways:

(1) An oral communication in real time, either in person or electronically, with the person responsible for the excavation or demolition. The operator shall also make a written record, contemporaneously at the time of the oral communication, containing at a minimum:

- (A) the date and time of the communication;
- (B) the name of all parties that participated in the communication; and
- (C) the new date by which the operator of the pipeline facility will provide the location information as required by IC 8-1-26-18.

A voicemail message is not sufficient notice under this subsection.

(2) A ~~signed, written documented notification provided by the operator to the agreement between the operator and the person responsible~~ for the excavation or demolition ~~agreeing to setting forth~~ a rescheduled deadline by which an operator will provide the location information as required under IC 8-1-26-18.

(b) An operator of a pipeline facility that does not provide notice as specified in this section:

- (1) fails to notify the person responsible for the excavation under IC 8-1-26-18(k); and
- (2) if IC 8-1-26-18(h) otherwise applies, the operator is subject to the penalty specified in IC 8-1-26-18(h).

(c) An operator complies with this section if it does all of the following:

(1) attempts to locate the facility at the site of the excavation but is unsuccessful because the

Commented [EJA5]: Substitute with "notification." Not reasonable to require operator to reach agreement with excavator. Only to notify excavator of what is possible.

Could create a contractually binding agreement between operator and excavator?

facility is untoneable or for another documented reason;
(2) unsuccessfully attempts contact and creates a written record of the attempt as specified in subdivision (a)(1); and
(3) provides notice at the site of the excavation through marks on the ground or otherwise that the excavator may not dig because the area contains an unmarked facility.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.1)

SECTION 7. 170 IAC 5-5-2.2 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.2 Clearance Tolerance Zone

Authority: IC 8-1-26-26
Affected: IC 8-1-26-21

Sec. 2.2. The Tolerance Zone in which mechanized equipment may not be used is defined in As used in IC 8-1-26-20. As used in the statute, the phrase, “either side of the outer limits of the physical plant” A person responsible for an excavation or demolition shall maintain a clearance from mechanized equipment of not less than two (2) feet from the outer limits of physical plant, including means all sides outer limits of the physical plant, including above, below, and in a full radius surrounding the outer limits of the physical plant.

(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.2)

SECTION 8. 170 IAC 5-5-2.3 IS ADDED AS FOLLOWS:

170 IAC 5-5-2.3 Positive response to excavators of supplied location information

Authority: IC 8-1-26-26
Affected: IC 8-1-26-21

Sec. 2.3. (a) An operator of a pipeline facility shall provide an affirmative electronic response to the association in the manner directed by the association when the operator has provided the marking information in response to an 811 ticket.

(b) The association shall make available the operator’s response under subsection (a) to the person responsible for the excavation or demolition.

(c) An operator of a pipeline facility that does not provide the affirmative response required under subsection (a) violates IC 8-1-26-18(h)(1). If IC 8-1-26-18(h) otherwise applies, the operator is subject to the penalty specified in IC 8-1-26-18(h).

(Indiana Utility Regulatory Commission; 170 IAC 5-5-2.3)

SECTION 9. 170 IAC 5-5-3 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-3 Process for determining violations of the underground plant protection laws and penalties

Authority: IC 8-1-26-26
Affected: IC 8-1-26

Sec. 3. (a) The pipeline safety division shall investigate alleged violations of IC 8-1-26, by-

Commented [EJA6]: §.2.1(a)(2) Assumes excavator will take the phone call/answer text/answer email. The requirement of a written agreement would only work if there is also a rule creating a process or requirement for the excavator to monitor and respond to communications from the operator.

Operators strive to mark facilities as quickly as possible, reaching agreement with excavator would not shorten that timeframe. Therefore, operators should just have to provide notice to excavator of rescheduled deadline.

Operators estimate that having to reach agreement with excavator would double cost of compliance.

§ 2.1(c) Nos. 1 and 2 are documentation of the attempts. As long as agreement is changed to notification, these additions are ok.

Operators believe No. 3 goes to far. On a very large project, operator would have time to attempt a locate and mark the DO NOT DIG for the entire project in the 2-day timeframe. This also goes to the need for a rule requiring excavators to monitor and respond to communications from the operator.

Commented [BS7]: Although IC 8-1-26-20 uses the word *clearance*. The national standard language uses tolerance zone. In addition, clearance zone has a different meaning in electric line work and could be confusing. We recommend using tolerance zone.

Commented [EJA8]: Added to reduce confusion about whether radius is measured from center of plant or its outer limits.

Commented [BS9]: Operators acknowledge that failure to comply with subsection (a) would be a violation, but do not think that subsection (c) is necessary.

~~requesting a written response from all known persons or entities reportedly involved in the damage.~~ an incident, whose addresses are reported or available on the internet, within sixty (60) days. The pipeline safety division shall investigate all incidents pursuant to applicable federal requirements and may investigate incidents further at its discretion.

(b) The pipeline safety division shall **determine whether a violation of IC 8-1-26 occurred and by whom. After making a determination of a violation, the pipeline safety division shall** forward its findings of violations of requirements provided in IC 8-1-26 to the advisory committee.

~~(c) The advisory committee will provide the person or entity accused of violating IC 8-1-26 with a copy of the pipeline safety division's summary damage report.~~

~~(d)(c)~~ The advisory committee **pipeline safety division** will provide the person or entity accused of violating IC 8-1-26 with notice and an opportunity to appear before the advisory committee **to provide written evidence** prior to the advisory committee making a recommendation on the summary damage report.

~~(e)(d)~~ A person or entity accused of violating IC 8-1-26 may send correspondence **and written evidence** regarding the pipeline safety division's finding of a violation to the advisory committee **or in lieu of appearing appear** at the public meeting in person **to provide the written evidence.** All correspondence must be addressed to the Underground Plant Protection Advisory Committee, Indiana Utility Regulatory Commission, 101 West Washington Street, Suite 1500 E, Indianapolis, Indiana 46204.

~~(f)(e)~~ **The advisory committee shall use a publicly available penalty schedule when determining recommended penalties.**

~~(g)(f)~~ Upon receiving a recommendation from the advisory committee, the commission shall provide the person or entity accused of violating IC 8-1-26 with notice of the advisory committee's recommendation and provide the person or entity thirty (30) days to request a public hearing on the advisory committee's recommendation.

~~(h)(g)~~ A request for a public hearing before the commission must be ~~in writing and shall be considered filed upon receipt by the commission~~ **filed and served following the procedures in 170 IAC 1-1.1.**

~~(i)(h)~~ If a person or entity accused of violating IC 8-1-26 does not request a public hearing, the commission ~~will~~**may** act upon the advisory committee's recommendation.

~~(j)(i)~~ All hearings before the commission regarding violations of IC 8-1-26 are subject to the commission's rules of practice and procedure.

~~(k)(j)~~ A person or entity found in violation of IC 8-1-26 may be required to pay a civil penalty. All civil penalties must be paid to the commission within ninety (90) days of being assessed. (*Indiana Utility Regulatory Commission; 170 IAC 5-5-3; filed May 25, 2011, 12:57 p.m.: 20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA*)

SECTION 10. 170 IAC 5-5-4 IS AMENDED TO READ AS FOLLOWS:

170 IAC 5-5-4 Underground plant protection account

Authority: IC 8-1-26-26

Affected: IC 8-1-26-18; IC 8-1-26-25

Sec. 4. (a) The commission shall administer the account.

(b) The account consists of civil penalties issued pursuant to IC 8-1-26.

(c) The commission shall maintain a publicly available website with information about the account.

(d) A person may submit a request for a grant to the commission that:

(1) complies with the purposes of the account under IC 8-1-26-24; and

(2) follows the guidelines set forth on the commission's website.

*(Indiana Utility Regulatory Commission; 170 IAC 5-5-4; filed May 25, 2011, 12:57 p.m.:
20110622-IR-170100184FRA; readopted filed Apr 11, 2017, 9:52 a.m.: 20170510-IR-170170124RFA)*