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**TITLE 20. PUBLIC UTILITIES AND
TELECOMMUNICATIONS**

STATE CORPORATION COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: 20VAC5-309. Rules for Enforcement of the Underground Utility Damage Prevention Act (amending 20VAC5-309-15, 20VAC5-309-90, 20VAC5-

309-110, 20VAC5-309-120; adding 20VAC5-309-165, 20VAC5-309-190, 20VAC5-309-200).

Statutory Authority: §§ 12.1-13 and 56-265.30 of the Code of Virginia.

Effective Date: October 1, 2012.

Agency Contact: Shane Ayers, Safety Program Manager, Utility and Railroad Safety Division, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9561, FAX (804) 371-9734, or email shane.ayers@scc.virginia.gov.

Summary:

The amendments to this chapter are:

20VAC5-309-15. Definitions. This amendment moves the definition of "Clear Evidence" from 20VAC5-309-120 to 20VAC5-309-15 and adds a definition for "GPS" which is used in proposed rule 20VAC5-309-190.

20VAC5-309-90. Emergency excavation or demolition. This amendment prevents potential abuse of emergency notices for nonemergency excavations and demolitions.

20VAC5-309-110. General marking requirements. This amendment defines the marking requirements clearly in the rule independent of an external document (the Virginia Underground Utility Marking Standards Booklet) to allow updating the best practices in this booklet, when necessary, without the need to change the reference in the rules.

20VAC5-309-120. Notification of clear evidence. This amendment prevents potential abuse of three hour notices when an excavator has not observed clear evidence of an unmarked utility line and simply wishes to have the site remarked without waiting the period required by the Underground Utility Damage Prevention Act.

20VAC5-309-165. Operator's responsibilities for abandoned utility lines. This new section clearly defines an operator's responsibility to timely respond to an excavator's request regarding the status of an unmarked utility line (i.e., active or abandoned). This information will reduce downtime costs for excavators and capture additional information regarding such lines on operators' records, which will assist in preventing future confusion on excavations performed at or near the same location.

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition. This new section further delineates means by which a person serving notice of proposed excavation or demolition to the notification center can describe their work area. If work areas are too large, operators responding to the notices incur additional cost by wasting valuable time and resources marking utility lines in areas where no excavation or demolition will occur.

20VAC5-309-200. Reporting damage by calling 911. This new section better defines the requirements of § 56-265.24 E of the Code of Virginia, enhances public safety in the

event of a pipeline incident, and brings Virginia's requirements more in line with the federal Pipeline Safety Act of 2011.

Since publication of the proposed regulation, changes were made to 20VAC5-309-190 to (i) stress utilization, as opposed to approval, of GPS nomenclature; (ii) address the possibility of multiple structures on a parcel and oddly shaped parcels; and (iii) identify the perspective from which the quadrants are to be identified.

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. URS-2012-00183

Ex Parte: In the matter concerning Rules implementing the State Corporation Commission's authority to enforce the Underground Utility Damage Prevention Act

ORDER ADOPTING REGULATIONS

On May 29, 2012, the State Corporation Commission ("Commission") initiated a rulemaking pursuant to § 56-265.30 of the Code of Virginia ("Code"), which authorizes the Commission to enforce the provisions of Chapter 10.3 of Title 56 of the Code,¹ also known as the Underground Utility Damage Prevention Act ("Act"). Section 56-265.30 of the Code also authorizes the Commission to promulgate any rules or regulations necessary to implement the Commission's authority to enforce the Act.

The Commission's Division of Utility and Railroad Safety ("Division") proposed that the Commission adopt several additional rules for the enforcement of the Act following an extensive collaborative process involving the Division, the Advisory Committee (established in accordance with § 56-265.31 of the Code), and industry stakeholders. In addition, the Division proposed several revisions to existing rules to better define the marking standards for underground utility lines. Finally, a new rule was proposed to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid.²

The Commission's May 29, 2012 Order for Notice and Comment ("May 29, 2012 Order") set out the rules proposed by the Division and provided that public notice of the Proposed Rules be given so as to afford any interested person or entity an opportunity to comment on the Proposed Rules, to request a hearing thereon, or to propose modifications or supplements to the Proposed Rules.

Notice of the proceeding was published in the Virginia Register on June 18, 2012, and in newspapers of general circulation throughout the Commonwealth.³ Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before July 9, 2012.

Comments in this proceeding were submitted by: Roanoke Gas Company, Columbia Gas of Virginia, Inc. ("Columbia Gas"), the Virginia Association of Municipal Wastewater

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Agencies, Inc. ("VAMWA"), and the Virginia Telecommunications Industry Association ("VTIA"). The Commission did not receive a request for a hearing on the Proposed Rules.

Specifically, comments submitted in this proceeding proposed certain modifications to Proposed Rules 20 VAC 5-309-110,⁴ 20 VAC 5-309-165, 20 VAC 5-309-190, and 20 VAC 5-309-200. Regarding Proposed Rule 20 VAC 5-309-165 ("Proposed Rule 165"), VAMWA offered several revisions "to clarify the purpose of the requirement and to better reference existing Virginia Code sections regarding unmarked utility lines."⁵ VAMWA also recommended that the 27-hour requirement for reporting the status of an abandoned utility line and the 96-hour deferral thereof be modified to begin with the operator's response, as opposed to the excavator's notice of an unmarked utility line to the notification center. VAMWA's modifications also contemplated a scenario where an excavator and operator cannot agree to a time period in excess of 27 hours for the operator to provide Proposed Rule 165's required information to the excavator. Further, VAMWA's comments emphasized that ownership of an abandoned line should trigger the responsibilities contained in Proposed Rule 165.⁶ VTIA recommended modification to Proposed Rule 165 in order "to clarify that a declaration of 'extraordinary circumstances' as defined in § 56-265.15 of the Code does not require the mutual agreement of the excavator and the operator."⁷

Columbia Gas and VTIA expressed concerns that Proposed Rule 20 VAC 5-309-190 ("Proposed Rule 190") fails to contemplate multiple structures on a single parcel.⁸ Columbia Gas also offered additional language to Proposed Rule 190 "to clarify that the intent of the Proposed Rule is for operators and excavators to utilize GPS nomenclature approved by the Advisory Committee as opposed to simply requiring that the Advisory Committee approve such GPS nomenclature"⁹ and "to clarify the intent of the perspective from which the quadrants of a parcel or property are to be identified."¹⁰ Columbia Gas further expressed concern that provisions of Proposed Rule 190 B may lead to confusion in certain circumstances.¹¹

Finally, regarding Proposed Rule 20 VAC 5-309-200 ("Proposed Rule 200"), VTIA recommended adding the words "reasonably observable" to support their position that "it is not feasible to require an excavator, or anyone for that matter, to call 911 to report something of which they are not aware."¹²

As directed by the May 29, 2012 Order, the Division filed a report ("Response") on July 19, 2012, in response to the comments received on the Proposed Rules. In response to comments submitted on Proposed Rule 165, the Division opposed VAMWA's revisions, stating that "it is unnecessary to incorporate established statutory requirements for responding to and marking unmarked utility lines in this Proposed Rule,"¹³ and that, because the operator's additional

notice to the notification center pursuant to § 56-265.17 C is verifiable, "starting the clock at the time of notice to the notification center is much more feasible than VAMWA's alternative."¹⁴ The Division further noted that the definition of "operator" found in § 56-265.15 of the Code is not based solely on ownership of an underground utility line and, regarding communication of the status of an abandoned line, stated "it is reasonable to require the operator and excavator to negotiate 'a mutually agreeable time period in excess of 27 hours,' as contemplated by this Proposed Rule."¹⁵ The Division also opposed VTIA's suggested modification to Proposed Rule 165 concerning time requirements for certain communications in extraordinary circumstances. The Division stated that "even in extraordinary circumstances, the Division believes that the Proposed Rule provides sufficient time to determine the status of the utility line and provide that information to the excavator."¹⁶ The Division recommended that the Commission adopt Proposed Rule 165 without the modifications suggested by VAMWA and VTIA.

Addressing concerns raised about Proposed Rule 190, the Division agreed that the Proposed Rule could benefit from additional clarification (i) stressing utilization, as opposed to approval, of GPS nomenclature; (ii) regarding the possibility of multiple structures on a parcel and oddly shaped parcels; and (iii) identifying the perspective from which the quadrants are to be identified.¹⁷ The Division did not oppose additional specific language offered by Columbia Gas to address some of these concerns.¹⁸ The comments received in this proceeding did not recommend any particular modifications to address the issue of dividing oddly shaped parcels into quadrants for purposes of describing limits of proposed excavation or demolition. Therefore, the Division suggested amending Proposed Rule 190 to include the words "if geographically feasible" to address this concern.¹⁹ In response to other circumstances in which Columbia Gas suggested Proposed Rule 190 could lead to confusion, the Division stated that it "disagrees that the location of a single structure on the parcel could result in confusion."²⁰

In response to VTIA's modification to Proposed Rule 200, the Division noted that the purpose of the Proposed Rule is "to better align Virginia and federal statutory requirements in the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous or corrosive gas or liquid"²¹ and stated that it believes that Proposed Rule 200, as drafted, "is consistent with the current federal requirement."²² Accordingly, the Division recommended that the Commission adopt Proposed Rule 200 without modification.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the proposed regulations as revised and set forth in the Division's Response should be adopted. We find that Columbia Gas's Motion to Withdraw should be granted and note that modifications to Proposed Rules 165, 190, and 200, as discussed herein, remain at issue in this proceeding. We agree with the

Division, for the reasons stated in its Response, that Proposed Rules 165 and 200 should be adopted as proposed in the May 29, 2012 Order without further modification. We further agree that clarifying revisions to Proposed Rule 190 are appropriate and find that such modifications should be adopted as set forth in the Division's Response.

Accordingly, IT IS ORDERED THAT:

(1) Columbia Gas's Motion to Withdraw is hereby granted.

(2) The Commission's regulations regarding Rules for Enforcement of the Underground Utility Damage Prevention Act, 20 VAC 5-309-10 et seq., are hereby adopted as shown in Appendix A to this Order, and shall become effective as of October 1, 2012.

(3) A copy of these regulations as set out in Appendix A of this Order shall be forwarded to the Registrar of Regulations for publication in the Virginia Register.

(4) There being nothing further to come before the Commission, this case hereby is dismissed from the Commission's docket of active cases, and the papers filed herein shall be placed in the Commission's file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Robert C. Steidel, Virginia Association of Municipal Wastewater Agencies, Inc., P.O. Box 51, Richmond, Virginia 23218-0051; Richard D. Gary, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; John B. Williamson, III, Roanoke Gas, 518 Kimball Avenue, NE, P.O. Box 13007, Roanoke, Virginia 24030; and James S. Copenhaver, Assistant General Counsel, NiSource Corporate Services Company, 1809 Coyote Drive, Chester, Virginia 23836; and a copy shall be delivered to the Commission's Office of General Counsel and Division of Utility and Railroad Safety.

¹Va. Code §§ 56-265.14 et seq.

²The proposed revisions to existing rules, together with all proposed additional rules, are collectively referred to herein as the "Proposed Rules."

³See Memoranda from Laura S. Martin of the Commission's Division of Information Resources, filed in this docket on June 20, 2012, and June 27, 2012.

⁴On July 16, 2012, Columbia Gas filed a Motion for Leave to Withdraw Comments Re: Proposed Rule 20 VAC 5-309-110(P) ("Motion to Withdraw") in which it sought to withdraw its comments related to that Proposed Rule.

⁵Comments of VAMWA at 1.

⁶*Id.* at 2.

⁷Comments of VTIA at 2.

⁸*Id.*; Comments of Columbia Gas at 4.

⁹Comments of Columbia Gas at 6.

¹⁰*Id.* at 5.

¹¹*Id.* at 4-6.

¹²Comments of VTIA at 3.

¹³Response at 2.

¹⁴*Id.* at 3.

¹⁵*Id.* at 4.

¹⁶*Id.* at 4-5.

¹⁷*Id.* at 5-7.

¹⁸*Id.* at 5, 7.

¹⁹*Id.* at 8.

²⁰*Id.* at 6.

²¹*Id.* at 9 (quoting May 29, 2012 Order at 1).

²²*Id.* at 10.

20VAC5-309-15. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"Act" means the Underground Utility Damage Prevention Act (Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia).

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line.

"Division" means the State Corporation Commission's Division of Utility and Railroad Safety.

"GPS" means global positioning system.

"Installation records of a utility line" means maps, drawings, diagram, sketches, or any other depictions or descriptions of an underground utility line that reflect the location at the time of installation in a reasonably accurate manner.

"Locate" or "marking" means an operator's or its contract locator's markings of an underground utility line.

"Serious impact on public health" means any condition involving a water or sewer utility line that creates, or may create, a danger to the health and well being of the public.

Part III

Emergency Excavation or Demolition

20VAC5-309-90. Emergency excavation or demolition.

A. No person shall serve an emergency notice on the notification center unless the work to be performed is in response to an "emergency," as the term is defined in § 56-265.15 of the Code of Virginia.

B. When excavation or demolition is required during an emergency as defined in § 56-265.15 of the Code of Virginia, all reasonable precautions shall be taken to protect underground utility lines that may be located at the site of the excavation. These precautions shall include, but are not limited to, the following:

1. Dispatched personnel or crews responding to the emergency shall notify the notification center and request an emergency locate of the underground utility lines at the earliest reasonable opportunity;
2. After arriving at the site, the person responding to the emergency shall determine the need for immediate action;
3. If immediate action is required, all reasonable precautions shall be taken to protect the underground utility lines. These actions shall include, but are not limited to, the following:

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- a. Conduct a thorough site assessment to determine the location of underground utility lines;
- b. Locate the underground utility lines with acceptable equipment, if possible;
- c. Hand dig around the underground utility lines;
- d. Directly notify the utility line operators, if necessary; and
- e. If prudent, the excavator shall wait for marking of the excavation area by operators having utility lines in the excavation area.

20VAC5-309-110. General marking requirements.

A. All markings shall be suitable for their intended purpose for a period of 15 working days beginning at 7 a.m. on the next working day following notice by the excavator to the notification center.

B. Markings shall be made at sufficient intervals to clearly indicate the approximate horizontal location and direction of the underground utility line. However, the distance between any two marks indicating the same utility line shall not exceed 20 feet. Site conditions or directional changes of the underground utility line shall be considered to determine the need for shorter distance between marks.

C. Markings of underground utility lines shall be by means of stakes, paint, flags, or combination thereof. The terrain, site conditions, and the type and extent of the proposed excavation shall be considered to determine the most suitable means to mark underground utility lines.

D. Paint marks shall be approximately 8 to 10 inches in length and one to two inches in width except when "spot" marking is necessary.

E. A minimum of three separate marks shall be made for each underground utility line marking.

F. Valve box covers that are at grade and visible shall be marked with the appropriate color in accordance with the Act.

G. If in the process of marking an underground utility line, a customer-owned underground utility line of the same type is discovered, the operator or its contract locator shall make a reasonable effort to contact the excavator or the customer to advise of the presence of the line.

H. Where the proposed excavation crosses an underground utility line, markings shall be at intervals that clearly define the route of the underground line.

I. All markings shall extend if practical, a reasonable distance beyond the boundaries of the specific location of the proposed work as detailed on the ticket.

J. If the use of line marking is considered damaging to property (driveways, landscaping, historic locations to the extent boundaries are known), "spot" marking or other suitable marking methods shall be used.

K. Markings shall be valid for an excavation site for 15 working days beginning at 7 a.m. on the next working day

following notice to the notification center by the excavator or until one of the following events occurs:

1. The markings become faded, illegible or destroyed; or
2. If the markings were placed in response to an emergency and the emergency condition has ceased to exist.

L. Where permitted by the operator's records, all utility lines of the same type in the same trench owned by the same operator shall be marked individually or by a single mark. If a single mark is used, the number of the utility lines shall be indicated at every other mark.

M. Operators or their contract locators shall use all information necessary to mark their facilities accurately.

N. Markings of an underground pipeline greater than 12 inches in nominal outside dimension shall include the size in inches at every other mark.

O. ~~Duct structures and conduit systems shall be marked in accordance with the horizontal marking symbols for such structures and conduit systems as shown in item nine of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf) with line markings indicating the approximate outer dimensions of the duct structure or conduit system and a solid closed circle over the approximate center of the duct structure or conduit system.~~

P. In areas where marks would be destroyed, offset markings shall be made using horizontal marking symbols as shown in item 15 of the Virginia Underground Utility Marking Best Practices as provided in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf) such as high traffic areas, gravel areas, dirt areas, or where surface conditions are such that the placement of marks directly over the utility line is not possible, offset markings shall be used. The offset marks shall be placed on a permanent surface, which is not likely to be destroyed. Offset marks shall include a line marking placed parallel to the underground utility line and an arrow, pointing in the direction of the utility line, with the distance in feet and inches to the location of the utility line shown on the right side of the arrow and size, material type, and the operator's letter designation information on the left side of the arrow. When possible, offset marks shall be used in conjunction with locate marks placed in accordance with the Act.

Q. The assigned letter designations for each operator to be used in conjunction with markings of underground utility lines shall be the same as those assigned by the notification center certified for a geographic area, subject to the review of the same and approval of such designations in writing by the advisory committee. Such approved designations by the advisory committee shall be deemed final unless appealed to the commission within 30 days of the advisory committee's

written evidence of approval. Operators wishing to appeal the letter designations assigned in accordance with this section may file an appropriate formal pleading with the commission seeking review of the assigned letter designation within 30 days of the issuance of the written approval of the advisory committee.

R. The symbols for marking of underground utility lines in compliance with § 56-265.19 F (ii) of the Act shall be the same as those shown in the Virginia Underground Utility Marking Standards (March 2004) published by the division (http://www.state.va.us/sec/division/urs/mutility/va_uums.pdf) placed in response to a notice of proposed excavation or demolition.

Part V
Supplemental Rules, Etc.

20VAC5-309-120. Clear Notification of clear evidence.

"Clear evidence" as used in § 56-265.24 C of the Code of Virginia shall include, but is not limited to, visual evidence of an unmarked utility line, knowledge of the presence of a utility line, or faded marks from previous marking of a utility line ~~No person shall serve a notice on the notification center regarding clear evidence of the presence of an unmarked utility line pursuant to § 56-265.24 C of the Code of Virginia unless (i) the excavator has previously notified the notification center of the proposed excavation pursuant to § 56-265.17 A of the Code of Virginia, (ii) the excavator has complied with the requirements of 20VAC5-309-180, and (iii) the excavator has observed clear evidence of the presence of an unmarked utility line in the area of the proposed excavation.~~

20VAC5-309-165. Operator's responsibilities for abandoned utility lines.

A. Upon receipt of an additional notice to the notification center pursuant to § 56-265.24 C of the Code of Virginia, if the operator determines that an abandoned utility line exists, the operator shall provide the status of the utility line to the excavator within 27 hours, excluding Saturdays, Sundays, and legal holidays, from the time the excavator makes the additional notice to the notification center. The excavator and operator may negotiate a mutually agreeable time period in excess of 27 hours for the operator to provide such information to the excavator if site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, as defined in § 56-265.15 of the Code of Virginia. If the site conditions prohibit the operator from making such a determination or extraordinary circumstances exist, the operator shall directly notify the person who proposes to excavate or demolish and shall, in addition, notify that person of the date and time when the status of the utility line will be determined. The deferral to determine the status of the utility line shall be no longer than 96 hours from 7 a.m. on the next working day following the excavator's additional notice to the notification center.

B. The operator shall record and maintain the location information of the abandoned utility line as determined by the operator. Such records need not include abandoned underground electric, telecommunications, cable television, water, and sewer lines connected to a single family dwelling unit.

20VAC5-309-190. Delineating specific location of a proposed excavation or demolition.

A. Any person, as defined in § 56-265.15 of the Code of Virginia, providing notice of a proposed excavation or demolition shall clearly describe the limits of the proposed excavation or demolition with sufficient detail to enable the operators to ascertain the location of the proposed excavation. The specific location of the proposed excavation or demolition may include, but is not limited to:

1. GPS coordinates taken at a single point where work is planned or GPS coordinates taken to delineate a line, multi-segment line, or polygon. When providing a single point, line, or multi-segment line, the person providing notice shall include an area measured in feet from the coordinates that describe the work area. If a polygon is used, the proposed work area shall be inside the polygon. GPS nomenclatures used for providing coordinates to the notification center shall be [as] approved by the advisory committee.

2. White lining to delineate the area where excavation will take place. For single point excavation, the area shall be marked using dots, dashes, or white flags to show the operators the area of excavation. If utility markings are desired outside a white lined area, the excavator shall provide clear instructions, to include the distance in feet outside the white lined area, to the notification center. For continuous excavations, such as trenching and boring, the excavator shall mark the center line of excavation by the use of dots or dashes. The excavation width, in feet, shall be indicated on either side of the center line in legible figures or noted in the marking instructions given to the notification center.

3. White lining performed by electronic means using aerial imagery. White lining performed by electronic means shall follow the same requirements as listed in subdivision 2 of this subsection.

4. A reference to the two nearest intersecting streets, if available, or driving directions.

B. In the event that a proposed excavation or demolition is planned at a single address [at which there is no more than one structure], the area of proposed excavation or demolition may [, if geographically feasible,] be described by dividing the parcel or property into four quadrants [as facing from the perspective of facing the front of] the property using the center of the structure as the center point of the four quadrants. If no structure exists on the property, the center of the parcel or property will be used as the center point of the four quadrants. These four quadrants shall be referred to as

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Front Left, Front Right, Rear Left, and Rear Right. If the proposed area consists only of Front Left and Front Right quadrants, the term "Front" shall be sufficient. If the proposed area of excavation consists only of Rear Left and Rear Right quadrants, the term "Rear" shall be sufficient. If the proposed area of excavation consists only of Front Left and Rear Left quadrants, the term "Left Side" shall be sufficient. If the proposed area of excavation consists only of Front Right and Rear Right quadrants, the term "Right Side" shall be sufficient. If the proposed area of excavation includes three out of the four quadrants, the entire property may be used for the proposed excavation or demolition.

20VAC5-309-200. Reporting damage by calling 911.

In the event that damage to an underground utility line results in the escape of any flammable, toxic, hazardous, or corrosive gas or liquid, the excavator shall, in addition to complying with §§ 56-265.24 D and E of the Code of Virginia, promptly report the damage to the appropriate authorities by calling the 911 emergency telephone number.

VA.R. Doc. No. R12-3230; Filed September 23, 2012, 5:49 p.m.

