
California Underground Facilities Safe Excavation Board

October 15-16, 2018

Agenda Item No. 4 (Action Item) – Staff Report

Resolution No. 18-10-01: Authorize the Executive Director to execute a memorandum of understanding with the California Public Utilities Commission

Presenter

Tony Marino, Executive Director
Deborah Yang, Legal Counsel

Recommendation

Staff recommends the Board adopt Resolution No. 18-10-01 authorizing the Executive Director to execute a memorandum of understanding with the California Public Utilities Commission (“PUC”).

Background

The Dig Safe Board was established under the Dig Safe Act of 2016 (the “Act”) to coordinate education and outreach activities that encourage safe excavation practices, develop standards, investigate possible violations, enforce Government Code section 4216 et seq. on specified persons, and make enforcement recommendations to the PUC, the Contractors State License Board, and the Office of the State Fire Marshal.

Under the Act, the Dig Safe Board is authorized to make recommendations to the PUC to take enforcement actions related to incidents involving subsurface installations on gas corporations (as defined in section 222 of the Public Utilities Code), electrical corporations (as defined in section 218 of the Public Utilities Code), water corporations (as defined in section 241 of the Public Utilities Code), and telephone corporations (as defined in section 234 of the Public Utilities Code, when not acting as a contractor, as defined in article 2 (commencing with section 7025) of chapter 9 of division 3 of the Business and Professions Code).

The PUC is required by the Act to act to accept, amend, or reject the Dig Safe Board’s enforcement recommendation.

Discussion

After several months of discussions, staff and the PUC drafted a memorandum of understanding (“MOU”) to outline each state agency’s responsibilities and set forth the parties’ commitment to collaborate to increase public safety through information sharing guidelines that support investigation and enforcement processes and maximize resources. The parties will share relevant information about probable violations of the Act discovered during investigations; may coordinate investigation activities to optimize resources and ensure that violations are pursued by

the appropriate state agency; and will provide information about enforcement actions and other activities under the Act for purpose of reporting to the Federal Pipeline and Hazardous Materials Safety Administration (“PHMSA”), State Legislature, Governor, or other regulatory purposes. The MOU also provides that the parties may share confidential information regarding their respective investigatory procedures and investigations of probable violations, which may include information supplied by or on behalf of an operator or excavator, or other evidence gathered at the incident site or related to the incident such as photographs and witness statements. The parties will not release or disclose such confidential information without written consent, unless required by law or court order.

Staff believes the MOU with the PUC will further the Board’s purposes under the Act. Information sharing practices and cooperation among the state agencies with investigations and enforcement actions will increase the Board’s resources to effectively carry out its responsibilities.

RESOLUTION NO. 18-10-01

**RESOLUTION OF
THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
RELATING TO THE APPROVAL OF MEMORANDUM OF UNDERSTANDING WITH
THE CALIFORNIA PUBLIC UTILITIES COMMISSION AND AUTHORIZING THE
EXECUTIVE OFFICER TO EXECUTE THE MEMORANDUM OF UNDERSTANDING**

WHEREAS, pursuant to the Dig Safe Act of 2016 (SB 661, Chapter 809, Statutes of 2016) (the “Act”), codified under Government Code section 4216 et seq. (the “statute”), the California Underground Facilities Safe Excavation Board (the “Board”) is mandated to coordinate education and outreach activities that encourage safe excavation practices, develop certain standards for safe excavation practices, investigate possible violations of the statute, and enforce the statute on specified persons;

WHEREAS, the Board is authorized under the Act to make recommendations to the California Public Utilities Commission to take enforcement actions related to incidents involving subsurface installations on gas corporations (as defined in section 222 of the Public Utilities Code), electrical corporations (as defined in section 218 of the Public Utilities Code), water corporations (as defined in section 241 of the Public Utilities Code), and telephone corporations (as defined in section 234 of the Public Utilities Code, when not acting as a contractor, as defined in article 2 (commencing with section 7025) of chapter 9 of division 3 of the Business and Professions Code); and

WHEREAS, collaboration with the California Public Utilities Commission will further the Board’s responsibilities under the Act and help increase public safety through information sharing guidelines that support investigation and enforcement processes and maximize resources;

THEREFORE, BE IT RESOLVED that the Executive Officer is hereby authorized to execute a memorandum of understanding with the California Public Utilities Commission to outline each state agency’s responsibilities and set forth the parties’ commitment to collaborate to increase public safety through information sharing guidelines that support investigation and enforcement processes and maximize resources.

Date of Adoption: _____

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD
AND THE CALIFORNIA PUBLIC UTILITIES COMMISSION**

This Memorandum of Understanding (“MOU”) is made and entered into as of _____, 2018 by the California Underground Facilities Safe Excavation Board (the “Dig Safe Board”) and the California Public Utilities Commission (the “Commission”); each a “party” and collectively, the “parties”.

1. Purpose

The purpose of this MOU is to describe generally the roles and responsibilities of each party under Senate Bill 661 (Hill), known as the Dig Safe Act of 2016 (the “Act”). This MOU sets forth the parties’ commitment to collaborate to increase public safety. This MOU contains information sharing guidelines to support investigation and enforcement processes and maximize parties’ respective resources.

2. Roles and Responsibilities under the Dig Safe Act of 2016

The Dig Safe Board was established under the Act to coordinate education and outreach activities that encourage safe excavation practices, develop standards, investigate possible violations, enforce Government Code section 4216 et seq. on specified persons, and make enforcement recommendations to the Commission, the Contractor’s State License Board, and the Office of the State Fire Marshal. Further, the Dig Safe Board may prescribe rules and regulations as may be necessary or proper to carry out the purposes and intent of the Act, and to exercise the powers and duties conferred upon it by the Act.

Under the Act, the Dig Safe Board is authorized to make recommendations to the Commission to take enforcement actions related to incidents involving subsurface installations on:

- gas corporations, as defined in section 222 of the Public Utilities Code;
- electrical corporations, as defined in section 218 of the Public Utilities Code;
- water corporations, as defined in section 241 of the Public Utilities Code; and
- telephone corporations, as defined in section 234 of the Public Utilities Code, when not acting as a contractor, as defined in article 2 (commencing with section 7025) of chapter 9 of division 3 of the Business and Professions Code.

The Commission is required by the Act to act to accept, amend, or reject the Dig Safe Board’s enforcement recommendation.

3. Investigation and Enforcement Processes

- a. The parties have distinct duties to investigate incidents related to subsurface installations. The parties will cooperate, coordinate and assist each other with their respective investigations to the extent possible, which may include making relevant staff available for the other party’s enforcement proceedings.
- b. The parties will share relevant information about probable violations of the Act discovered during investigations as soon as practical.

- c. The parties may coordinate investigation activities to optimize resources and ensure that violations are pursued by the appropriate agency.
- d. The Commission will act to accept, amend, or reject a recommendation of the Dig Safe Board for an enforcement action under the Act as soon as practical, and share information with the Dig Safe Board about its ultimate actions related to the recommendation.
- e. The Dig Safe Board and the Commission will each promptly provide information about its enforcement actions and other activities under the Act when requested by the other party for reporting to the Federal Pipeline and Hazardous Materials Safety Administration, or the State Legislature or Governor, or other regulatory purposes.

4. Information Sharing Guidelines

- a. The parties may share confidential information regarding their respective investigatory procedures and investigations of a probable violation under the Act, which may include information supplied by or on behalf of an operator or excavator, or other evidence gathered at the incident site or related to the incident, such as photographs and witness statements. The parties may also share other confidential information, such as quarterly summary reports, supplied by or on behalf of an operator or excavator.
- b. Confidential information may be shared as described in this MOU and as allowed by law, without waiver of any privilege. Documents containing confidential information should be labeled as confidential or include a similar written advisory to that effect.
- c. Government Code section 6254.5(e) provides that disclosures made by any governmental agency to a governmental agency that agrees to treat the disclosed material as confidential will not constitute a waiver of any relevant exemption of the California Public Records Act. Pursuant to Government Code section 6254.5(e), investigative records exchanged by the parties will be maintained consistent with the provisions of the California Public Records Act.
- d. As provided in Government Code section 6254.5(e), confidential records will only be shared with persons authorized in writing by the Executive Officer or Executive Director of the relevant party (or by his or her authorized delegate).
- e. The parties will make all reasonable efforts to ensure that disclosure of confidential information will not occur. In the event an inadvertent disclosure of confidential or privileged information occurs, the party making such inadvertent disclosure will promptly notify the other party in writing and will make every reasonable effort to correct the inadvertent disclosure.
- f. Documents marked confidential shall not be made public by the recipient party without an agreement in writing from the party that provided the confidential information, unless required by law or by order of a court of competent jurisdiction.
- g. If either party receives a request to release, disclose, or access any confidential information provided to it by the other party (for example, pursuant to a subpoena,

discovery request, or the California Public Records Act), the party receiving the request shall promptly transmit a copy of the request to the party that originally generated the confidential or privileged document or communication.

5. Validity, Term, and Amendment

- a. This MOU may be executed in any number of counterparts, each of which when so executed and delivered shall be an original; but, all counterparts shall together constitute one and the same instrument.
- b. Any provision of this MOU that is determined to be invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining provisions of this MOU.
- c. This MOU shall remain in full force and effect unless amended, replaced, or terminated by operation of law or upon written agreement by the parties.

Each party represents and warrants that it has the right, power, and authority to execute this MOU. Each party represents and warrants that it has given any and all notices, and obtained any and all consents, powers, and authorities necessary to permit that party, and the persons executing this MOU on behalf of the party, to enter into this MOU.

IN WITNESS WHEREOF, the parties to this MOU have caused this MOU to be executed and delivered as of _____, 2018.

Tony Marino
Executive Officer
CALIFORNIA UNDERGROUND FACILITIES
SAFE EXCAVATION BOARD

Alice Stebbins
Executive Director
CALIFORNIA PUBLIC UTILITIES
COMMISSION