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**California Underground Facilities Safe Excavation Board  
("Dig Safe Board")**

**January 13-14, 2020**

Agenda Item No. 7 (Action Item) – Staff Report

*Resolution No. 20-01-05 Approval of the Regulations for the Area of Continual  
Excavation Renewal Ticket requirements and AB 1914 Implementation and  
Authorize Rulemaking Proceedings after considering Public Comments Received  
during the 45-Day Written Comment Period*

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**PRESENTER**

Jeff Brooks, Attorney

**SUMMARY**

Staff will discuss comments received from members of the public regarding the Board's proposed regulations relating to renewal of tickets for Areas of Continual Excavation and the use of power tools to locate underground utility facilities.

Staff recommends the approval of Resolution No. 20-01-05 to authorize the executive officer to proceed as required by the Administrative Procedure Act to adopt the proposed regulations and submit the proposed regulations with the supporting documentation required by law to the Office of Administrative Law.

**BACKGROUND**

During its July, 2019 meeting, the Board adopted resolution No. 19-07-02, which approved the text of the Board's third set of regulations relating to the renewal of tickets for Areas of Continual Excavation and AB 1914 implementation. The regulations were published for 45-day public review and comment period from November 8 through December 23. Staff will discuss comments received, and related issues, with the Board. The comments are attached.

**DISCUSSION**

***Public Comment Period***

The Board received comments from Jeremiah Nickless, Kinder Morgan; Todd Bloomstine, Bloomstine & Bloomstine, on behalf of the Southern California Contractors Association (SCCA); Ann Diamond, Underground Service Alert of Southern California; and Jessica M. Melton, Pacific Gas & Electric.

### ***Comments from Mr. Nickless***

Mr. Nickless discussed section 4501, the AB 1914 implementation regulation regarding the use of power tools within the tolerance zone. Mr. Nickless submitted essentially seven comments which are individually numbered in this report for ease of reference.

Three of the comments, numbered 1, 2, and 7, make the point that using power tools to excavate near underground utility facilities creates a risk that the excavation tool might strike the facility, and that the consequences of that strike could be fatal to workers or bystanders.

#### **Comment 1**

The use of power tools prior to identifying the subsurface installations is not an ideal scenario for many different reasons that depending on the situation could lead to serious injury or even death and or large financial cost.

#### **Comment 2**

One simple mistake while looking for a subsurface installation could lead to loss of power, water, gas, or any other valuable service to the public.

#### **Comment 7**

With all things being considered I strongly urge the board to reconsider the allowance of power equipment to expose subsurface installations prior to positive identification in the effort to keep workers, property, and facilities safe.

There's no question that the comments correctly describe the nature of the dangers involved. However, the Board has carefully considered the circumstances in which a power tool could safely be used to locate facilities. And statute expressly requires the Board to adopt the regulations permitting the use of power tools in the tolerance zone before the underground facility has been located: "The board shall adopt regulations to implement [§ 4216.4(a)(2)] on or before July 1, 2020." (Gov. Code section 4216.4(a)(2)(C).)

#### **Comment 3**

If you mistake what you think is a rock for slurry it could lead to an accident that could cause danger to the worker, the public, and the facility itself.

This comment also correctly states a matter of fact. An excavator who mistakes a concrete casing or structure for a rock could potentially proceed with the excavation in a way that would damage the facility. That's true no matter what type of tools are being used. The danger described by this comment arises from the excavator's mistaken perception or judgment, not from the use of power tools.

#### **Comment 4**

The proposed changes would add to an already existing issue of contractors attempting to dig and expose subsurface installations in a non-safe manner.

**Comment 6**

Companies go above and beyond to protect assets and use safe digging around high profile assets and by changing to the law to allow power tools prior to exposing and identifying these assets makes it harder to enforce safe digging practices with excavators.

These comments make two points. One, the point that not all excavations are conducted in accordance with applicable laws and best practices. Two, that in permitting the use of power tools to locate facilities, the regulation will encourage unsafe digging practices.

No one disputes the truth of the first point. If Dig Safe laws were universally followed, the Board's mission would not need the investigation and enforcement components.

However, staff has no expectation that the rule will make currently unsafe or noncompliant excavators compliant. And disagrees that the change makes noncompliance more difficult to enforce. The regulation imposes a number of conditions on an excavator who would use power tools such that compliance requires great care. The depth of knowledge and degree of care required to comply does not permit one who is currently behaving recklessly to do so and be compliant under the new rules.

**Comment 5**

The use of power equipment could cause damage to subsurface installations that may or may not be immediately noticeable at the tie of excavation and further down the road cause issues or failure to that utility.

This comment also makes an correct statement of fact. However, the use of hand tools could cause the same types of damage to the facility conduit or casing. The danger arises from the excavator's failure to proceed with reasonable care or to use best practices. Further, existing law requires an excavator who causes or discovers damage to a facility notify the operator. That damage may be a nick, dent, gouge, or damage to coating or cathodic protection. (Gov. Code § 2416.4(c)(1).) No matter what type of tool causes the damage, an excavator complying with the law will report the damage when it occurs.

***Comments from the Southern California Contractors Association***

On behalf of the Southern California Contractors Association, Mr. Bloomstine commented on sections 4003(a)(1), 4305, 4401, and 4501 of the regulations, and Government Code section 4216.22.

**Comment 1 – regarding section 4003(a)(1)**

SCCA is thankful for the communication encouraged by proposed Section 4003. The ability for an excavator to contact an operator in a timely manner represents a best practice in the industry.

However, SCCA does not find significant issues with the existing practice when contacting an operator. Moreover, the issue of “authorized” is un-defined in the section. Is the authorization applicable to a field-level operator employee or the

specified individual that will or has completed the locating and marking service? Does the “person” referenced in 4003(a)(1) include a third party company locating and marking for an operator? These are issues that will need to be clarified by the Board through some type of judicial or regulatory explanation.

Section 4003(a)(1) will require each member of a regional call center to maintain current contact information with the call center. Staff acknowledge the comment that ensuring an excavator’s ability to communicate timely with an operator is a best practice.

This comment raises two issues: (1) Is the regulation necessary? (2) Are the meaning of the terms “authorized” and “person” uncertain?

### ***Importance of Timely Communication***

Although SCCA members have not found “significant issues” when contacting operators, staff submit that operator contact information must be available to regional call centers and excavators. Regional call centers exist to contact operators after receiving locate and mark requests.<sup>1</sup> Call centers are required to make operator contact information available to excavators in certain instances.<sup>2</sup> Further, excavators often need to contact operators, either directly or indirectly. For example, an excavator may wish to discuss a time for an operator to locate and mark other than the time provided for in statute,<sup>3</sup> an excavator may have chosen an alternative method to delineate an area to be excavated,<sup>4</sup> a site to be marked may require special access or special instructions,<sup>5</sup> an excavator may wish to use a vacuum excavation device within the tolerance zone to expose installations,<sup>6</sup> an excavator may need more information from an operator to locate an installation,<sup>7</sup> or in the event that an excavator discovers or causes damage to an installation.<sup>8</sup>

### ***Use of the Terms “Authorized” and “Person”***

The comment asserts that the terms “authorized” and “person” are ambiguous. Regarding the term “authorized”, the comment asks this question: “Is the authorization applicable to a field-level operator employee or the specified individual that will or has completed the locating and marking service?” And regarding the term “person”, the comment asks this question: “Does the “person” referenced in 4003(a)(1) include a third party company locating and marking for an operator?”

The common meaning of the term “authorized” in this context is established, having remained unchanged for more than 100 years. In 1912, “authorize” was defined to mean “give authority to”.<sup>9</sup> And in 2013, “authorized” was again defined to mean “to grant authority or power to”.<sup>10</sup> In the legal context, the meaning is the same: “to give legal authority; to

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<sup>1</sup> see, Gov. Code §§ 4216.2(a),(e)

<sup>2</sup> Gov. Code §§ 4216.2(b); 4216.4(b); (c)(1); 4216.10(a)

<sup>3</sup> Gov. Code § 4216.2(b)

<sup>4</sup> see, Gov. Code § 4216(d)

<sup>5</sup> Gov. Code § 4216.2(h)

<sup>6</sup> Gov. Code § 4216.4(a)(2)(A)

<sup>7</sup> Gov. Code § 4216.4(b)

<sup>8</sup> Gov. Code § 4216.4(c)(1)

<sup>9</sup> Concise Oxford Dictionary (3<sup>rd</sup> ed. 1912)

<sup>10</sup> American Heritage Desk Dictionary (5<sup>th</sup> ed. 2013)

empower”.<sup>11</sup> Webster’s New International Dictionary<sup>12</sup> defined “authorized” to mean “recognized as having authority”, and provided this use example: “an authorized representative”.

The proposed regulation requires that each utility operator provide contact information to the regional call center contact for a “person authorized to respond to inquiries regarding the ... exact location of subsurface installations ....” The regulation establishes no other qualification. The person “authorized”, that is, the person “recognized as having authority” by the utility operator, must be able to respond to excavator inquiries regarding facility location. If that person can do so, then answers to questions posed by the comment do not affect application of the regulation. The “authorized person” could be a satisfy the condition whether or not the person is a “field-level” employee. And the person could also have been involved in the locating and marking, but need not have been.

**Comment 2** – regarding section 4305

The SCCA is thankful for the Board’s efforts to promulgate regulations for areas of continual excavation as directed by the Legislature in Government Code 4216.10(e). The idea that a farmer tilling a field must initiate contact with one of the regional call centers and then renew a ticket every 28 days falls well outside the spirit of Government Code Section 4216. SCCA commends the Board for its work in this area of the law.

Staff acknowledges and thanks the Association for the comment.

**Comment 3** – regarding section 4401:

Proposed section 4401(a) requires an excavator, when contacting one of the regional call centers, to provide “the contact information for a person knowledgeable in the proposed excavation.” Section 4401(1)(2) further requires the information to be accurate and to be updated with the call center if the person changes.

SCCA has considerable concern with this proposal. Foremost, Government 4216.2(b) merely requires an excavator to notify the call center with its plans to excavate. Nothing in Government Code 4216 et seq. requires an excavator to provide any type of contact information, let alone “accurate” information. Based on those grounds, the Board has exceeded its mandated.

Secondly, there are many different types of excavators within the construction industry. From farmers tilling their fields, to an excavator installing a sale sign for a real estate agent, to an international joint venture constructing high speed rail within the state — there are many different types of excavators. Not all excavators handle and process their tickets in the same way. Some may have a foreman in the field make contact with the call center and others may have a staff member person handle all tickets for the company. In some instances, the contact person may not even physically exist in the state of California. Requiring contact information for a person

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<sup>11</sup> Black’s Law Dictionary (8<sup>th</sup> ed. 2009)

<sup>12</sup> 1981

“knowledgeable in the proposed excavation activities” is unreasonable based upon the complexities of the excavation industry and the different means for businesses to manage tickets.

Requiring the excavator to update contact information is unreasonable. Proactively contacting the regional call center because an excavator’s staff member happens to be going on vacation is unnecessary and does not reflect the complexities of the excavation industry nor the different means for businesses to manage tickets. The Board should not assert itself at this level of detail for this particular issue.

SCCA suggests the regulation should better reflect the industry’s practices and Government Code Section 4216’s requirements. Excavation companies are, at their core, businesses. Responsible businesses have procedures and processes for a whole variety of business functions including providing information regarding excavation tickets. A better approach is to simply require contact information for the excavator and to eliminate 4401(a)(2) in its entirety.

Most concerning for the SCCA is the potential for violations of this section and subsequent sanctions. Should an excavator not provide updated information, it is in violation of the regulations and subject to penalties. Not providing updated information because an excavator’s staff member, for example, went on vacation is an overreach of the intent of Government Code section 4216 and should not be considered a violation, especially when excavators are already equipped to handle such requests without regulatory direction.

The SCCA objects to this regulation as an act in excess of the statutory authority granted to the Board by the Dig Safe laws in Article 2 (Gov. Code §§ 4216 – 4217): “Nothing in Government Code 4216 et seq. requires an excavator to provide any type of contact information, let alone “accurate” information.” In support, the Association notes that “Government 4216.2(b) merely requires an excavator to notify the call center with its plans to excavate.”

### ***Accurate Contact Information***

Regarding the objection to a rule requiring “accurate” information, “inaccurate” contact information is not contact information at all. Providing “inaccurate” information prevents one from reaching the desired party because it does not correspond to that party. Staff decline to discuss the claim given the presumption that the Association’s members are responsible entities that conduct business with integrity.

### ***Scope of Statutory Authority***

Regarding the Board’s statutory authority, the objection presents this issue: Does Article 2 require excavators to provide contact information?

The Association makes two correct observations about Government Code section 4216.2(b), which requires an excavator to obtain a ticket from a regional notification center before work begins. The statute does not expressly require excavator’s to provide contact information, and it does not expressly prohibit an excavator from providing inaccurate, false contact information.

However, Article 2 necessarily contemplates communication between professionals based on honesty and good faith. And section 4216.2(b) contemplates communication between an excavator and operator in providing that, "...an excavator and an operator may mutually agree to a different notice and start date. The contact information for operators notified shall be available to the excavator."

Further, Article 2 requires an operator to contact an excavator, either directly or through a regional call center, in multiple circumstances. For example, an excavator cannot begin working until receiving a response from every operator with utilities within the work area.<sup>13</sup> That response can be painted on the ground at the site. Or an operator may communicate directly with the excavator. Further, if a planned excavation is near a high priority subsurface installation, the utility operator is required to notify and meet with the excavator regarding to work.<sup>14</sup> If a work site cannot be readily accessed for the locate and mark response, an operator must contact the excavator regarding that access.<sup>15</sup> If an operator has an installation partially embedded in pavement, and if that installation is not visible from the surface, the operator must contact the excavator before pavement removal.<sup>16</sup> If the exact location of an installation can't be determined by hand excavation, the excavator must request the operator to provide additional information to the excavator.<sup>17</sup> And if an excavator has questions about an operator's markings at the work site, the excavator may ask the call center to have the operator contact the excavator directly.<sup>18</sup> An operator attempting to comply with any of these provisions necessarily needs access to an excavator's contact information.

In summary, Article 2 does require operators to contact excavators, directly or indirectly, in many instances. Those requirements impliedly, but clearly, also require that call centers and operators have access to the excavator's contact information. For these reasons, staff do not agree that requiring excavators to provide current contact information is an act outside of the Board's statutory authority.

### ***"Complexities of the Excavation Industry"***

The Association asserts that the "complexities of the excavation industry" make it unreasonable to require excavators to provide contact information to regional call centers. However, the comment does not explain how the "complexity" causes an inability to provide contact information. In fact, the comment explains that different types of excavators "handle and process their tickets" in different ways. And makes the point that excavation companies are businesses, and "[r]esponsible businesses have procedures and processes for a whole variety of business functions including providing information regarding excavation tickets." Staff isn't aware of any reason why an excavator cannot contact a regional call center to provide contact information.

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<sup>13</sup> Gov. Code § 4216.2(g)

<sup>14</sup> Gov. Code §§ 4216.2(c), 4216.10(c)(1)

<sup>15</sup> Gov. Code § 4216.2(h)

<sup>16</sup> Gov. Code § 4216.3(f)

<sup>17</sup> Gov. Code § 4216.4(b)

<sup>18</sup> Gov. Code § 4216.4(b)

### ***Updating Contact Information***

The Association asserts that requiring excavators to update contact information with a regional call center is unreasonable. And that an excavator should not be required to “proactively” contact a call center when the excavator’s point of contact for a project changes.

To permit an excavator to maintain outdated, incorrect contact information with a call center would impede the ability of the call center or a utility operator to communicate with the excavator in an emergency or for any of the reasons discussed above.

Staff agrees with the comment, regarding § 4003 (operator contact information), “[t]he ability for an excavator to contact an operator in a timely manner represents a best practice in the industry.” However, the staff do not believe the statement goes far enough. The communication is critical.

Given the value of the communication, staff suggest that access to accurate excavator contact information is an absolute necessity. The necessity compels both excavators and operators to update contact information with call centers. Staff submit that the Association’s comments appropriately note that excavators already comply with this requirement in the regular course of business: “excavators are already equipped to handle such requests without regulatory direction,” and that “[r]esponsible businesses have procedures and processes for a whole variety of business functions including providing information regarding excavation tickets.”

#### **Comment 4 – regarding section 4501**

SCCA commends the Board and staff for its work implementing AB 1914 (Chapter Number 708, Statutes of 2018). This section adds the use of pneumatic, electric or hydraulic hand tools in order to locate the exact location of the subsurface installation.

SCCA is particularly thankful for not requiring permission from the operator to proceed with the use of those types of tools. Rather, Proposed Section 4501(c) requires the excavator to request consultation with the operator and requires the operator to respond to the request and discuss with the excavator how to safely proceed. The association was concerned that third-party excavators would have difficulty receiving permission to use the hand tools if the regulation specifically required positive permission from the operator. SCCA members have already witnessed preferential treatment for excavators that have contracts with the operators to install, maintain or otherwise improve their underground property. Third-party excavators, ones that merely come into contact with underground utilities through the normal course of an excavation project, do not seem to have the same positive outcomes for such request that in-house employees or excavators working for operators have. The proposed regulation is neutral and does not favor one excavator-type over another.

Staff acknowledges and thanks the Association for the comment.



**Comment 5** – regarding Government Code section 4216.22

SCCA is concerned the Board and staff continue to greatly rely on the broad authority granted in Government Code Section 4216.22. In fact, five out of the six proposed sections contained in Z2019-1028-3 reference 4216.22.

Government code section 4216.12 creates the Board and charges it with coordinating education and outreach activities, developing standards, investigating violations and enforcing compliance on entities other than utility companies and contractors. (It has the authority to recommend sanctions on utility companies and contractors.) SCCA believes the Board and staff’s focus should be on achieving the tasks the legislature explicitly charged it to accomplish.

As the comment notes, Government Code section 4216.12 requires the Board to investigate violations of, and enforce compliance with, the requirements of Article 2 (Gov. Code §§ 4216 – 4216.24). Government Code section 4216.22 expressly authorizes the Board to prescribe regulations as necessary and proper to investigate and enforce compliance. The Board is fulfilling those statutory requirements, in part, through this proposed regulations package. As noted above regarding communication between operators and excavators, Article 2 requires access to accurate, current contact information corresponding to all involved in an excavation near underground facilities. In light of those requirements, staff submit that clear statutory authority exists for the requirements applied through these proposed regulations.

***Comments from the Underground Service Alert of Southern California***

On behalf of the Underground Service Alert of Southern California, Ms. Diamond commented on sections 4003(a)(1) and 4401(a)(1),(2).

**Comment 1**

Underground Service Alert of Southern California (DigAlert) believes in safety in damage prevention and would hope that any regulations developed by the Dig Safe Board would address safety concerns. However, a few of the proposed regulations do not seem in the best interest of safety.

Staff acknowledges the commenter’s conclusion.

**Comment 2** – regarding section 4003(a)(1)

While DigAlert applauds the Dig Safe Board for trying to solve the issue of having current contact information for its members, after 40 years DigAlert has found that keeping its members information current is not an easy task. Adding an additional regulation that members must not only maintain valid and current information, but also that they must have a contact that “can reach a person authorized to respond to inquiries regarding the determination of the exact location of subsurface installations” will make this task even more difficult.

Staff acknowledges the conclusion that regional call centers need access to member contact information.

The comment asserts that requiring contact information for operator representatives who can assist excavators with locating subsurface installation will make it more difficult for call centers to obtain current member contact information. Staff notes that other comments on this regulation highlight the importance of the communication the regulation is intended to facilitate:

From the Southern California Contractors Association:

“SCCA is thankful for the communication encouraged by proposed Section 4003. The ability for an excavator to contact an operator in a timely manner represents a best practice in the industry.”

From Pacific Gas & Electric:

“While PG&E supports the added provision to help foster easier communication between members of regional notification centers, excavators, and operators, PG&E seeks to highlight the importance of using phone calls to address immediate needs.”

“PG&E currently has a dispatch and information system in place that is regularly updated.”

“PG&E suggests adding language to address a process if members neglect to provide the valid contact information, such as temporary suspension of membership of Regional Notification Centers, until updated information is provided.”

The comment does not explain why this regulation will make it more difficult for the call center to obtain contact information from its members. And in light of the need served by the contact information the regulation requires, staff cannot recommend changing or eliminating this provision based on the conclusion urged by the comment.

**Comment 3** – regarding section 4401(a)(1)

DigAlert has, at the direction of our Board of Directors and in the interest of safety, always taken a ticket even if the excavator has not delineated before contacting the center as required (4216.2(a)), or they have not given the proper number of days notification (4216.2(b)). The excavator is made aware that they are in violation of California Government Code (CGC) section 4216. The proposed regulation 4401(a)(1) requiring excavators to provide a name, telephone number and an email address of “a person knowledgeable” will result in the center taking a ticket and informing the excavator they are in violation of regulations if they have not provided all the information.

Staff were not aware that the commenter’s staff were routinely determining if, and informing excavators when, excavators calling for tickets were out of compliance with Dig Safe laws. The decision to do so was made by the commenter. The Board does not require

the practice. And the commenter's decision to continue to do so with regard to this regulation does not address the need for, or any basis for objection to, the regulation.

As discussed above, Article 2 sometimes requires, and sometimes allows, operators to contact excavators to resolve issues involved in the work. Those provisions require that call centers have access to an excavator's current contact information.

Staff notes that the Southern California Contractors Association indicated that handling the administrative matters involved with tickets are a routine part of conducting business:

“Responsible businesses have procedures and processes for a whole variety of business functions including providing information regarding excavation tickets.”

And the comment from Pacific Gas & Electric notes the critical need served by the communication:

“PG&E supports the requirement for excavators to keep valid and current contact information. If properly adhered to, this would eliminate challenges operators may experience when contacting excavation company personnel. Having valid and current contact information for personnel knowledgeable in the proposed excavation activities will improve communication and limit second-hand information transfer which increases risk.”

Staff submits that the need for a call center or operator to reach an excavator is critical in some circumstances.

**Comment 4** – regarding section 4401(a)(2)

Furthermore, the proposed regulation 4401(a)(2) requiring the excavator to have the contact information and the person most knowledgeable of the proposed excavation activities be accurate during the entire time the ticket is valid will result in additional notifications sent to members and the excavator each time a change is made. This may result in unintended consequences for DigAlert. If too many emails are sent to a domain, then the provider can black list DigAlert's email server and notifications won't be sent until DigAlert can be white listed again. The same could happen with the renewal reminder notifications for area of continual excavation tickets.

This comment asserts that the regulation might completely prevent the call center from communicating with members or excavators by email. The rationale is that if the regulation increases the number of times the commenter communicates with members and excavators by email, the increased volume may cause servers or email boxes to block email sent by the call center.

Staff are not aware that the factual claim is accurately characterized. And staff submits that if any solution is needed, the solution does not involve sending fewer emails by ensuring that call centers cannot reach excavators. Rather, it would involve ensuring that server and

email account settings do not block emails from the call center's address.

#### **Comment 5**

As more regulations are added, each time a member or excavator is investigated, each infraction of a regulation can then be added to their violations of CGC 4216; is that truly in the interest of safety?

This comment relates to a single, and minor, aspect of the larger issue addressed by the regulation. Staff do not agree that the salient concern is whether "each infraction of a regulation can then be added to [an excavator's] violation of CGC 4216." Further, the focus of the comment implies that the Board's priority is to find new ways to penalize excavators.

The need to facilitate timely communication between operators and excavators is the policy priority recognized by the Board with this regulation. The commenter's members design, construct, and operate underground utility facilities. Those members, and excavators, conduct difficult, often dangerous work, and are subject to regulation by multiple agencies. Staff presumes that those businesses are responsible and committed to operating both efficiently and safely. Doing so sometimes requires that operators contact excavators. If contact information is not immediately available, then operators must spend time searching for it. And information that may decrease safety risks is not conveyed immediately.

#### ***Comments from Pacific Gas & Electric***

On behalf of Pacific Gas & Electric, Ms. Melton commented on sections 4003(a)(1), 4305, 4310, 4345, 4401, and 4501.

#### **Comment 1 – regarding section 4003(a)(1)**

PG&E generally supports the proposed text in Section 4003(a)(1), Valid and Current Contact Information for Members of Regional Notification Centers. PG&E currently has a dispatch and information system in place that is regularly updated. The revision will make operator contact information more readily available to excavators who need to determine the exact location of a subsurface installation. By requiring operator contact information such as name, telephone number, and email, those who may need to be contacted can be reached through multiple means of communication. PG&E questions whether the rule should be more explicit about where the information is stored. It would add clarity to address whether this information is stored in the application or database.

While PG&E supports the added provision to help foster easier communication between members of regional notification centers, excavators, and operators, PG&E seeks to highlight the importance of using phone calls to address immediate needs. Excavation sites are very dynamic and may require immediate action or discussion to resolve issues that arise. While email communication is effective to communicate a plan or understanding, phone calls to direct contacts have been found to be the most effective way to address immediate action items.

PG&E suggests adding language to address a process if members neglect to provide the valid contact information, such as temporary suspension of membership of Regional Notification Centers until updated information is provided.

Staff acknowledge the comment's conclusion that the ability of an excavator or call center to timely communicate with an operator is of critical importance.

Regarding the commenter's preference for telephonic communication to address immediate needs, staff note that the Board considered whether the regulation should require either telephonic or email communication, or both, at the excavator's option. The Board's intention was to provide operators with flexibility given their particular organization type and administrative processes.

**Comment 2** – regarding section 4305

PG&E generally supports the specific purpose of Section 4305, Persons Eligible to Work Under a Continual Excavation Ticket. PG&E proposes that the means of communication be more clearly defined. Section 4305 states “shall communicate information” but does not clearly outline the type of communication. PG&E suggests that written communication should mirror the same data fields as the Area of Continual Excavation Agreement. PG&E suggests the proposed regulation include a requirement that the continual excavation ticket requestor update the ticket upon any change in the initial description and that the ticket requestor also maintain current documentation for all excavators authorized to work on their behalf. This section should outline an obligation to identify those who are authorized by the excavator to perform work because this information will provide clarity to investigators on authorized excavators in the event an incident occurs.

Regarding the assertion that the regulation “does not clearly outline the type of communication,” staff note that the regulation specifies the type of information with this text, “about the extent of the area of excavation, the location of subsurface infrastructure within the area of continual excavation, and the type of work described within the continual excavation ticket.” The Board did not require a particular form of communication. Rather, this regulation permits the excavator to choose the manner in which the information is communicated to employees or contractors. Staff submits that the regulation needs to specify the type of information communicated, not the way in which it's communicated.

Regarding the assertion that the regulation should require an excavator to “identify whose who are authorized by the excavator to perform work,” staff submits that the requirement is not needed because the excavator, having authorized employees or contractors to perform the work, can provide the identities and contact information if investigators need it.

**Comment 3** – regarding section 4310

PG&E supports the use of electronic reminder notifications before ticket expiration. The reminder is a simple and efficient means of communicating the deadline and allows for the excavator to have advance notice of when to apply for a renewed ticket.

Staff acknowledges the comment.

**Comment 4** – regarding section 4345

PG&E supports allowing the holder of a renewed continual excavation ticket to continue working for 30 days to allow the excavator and operator to meet and agree to a new continual excavation plan. This proposed section strikes a balance between allowing work to continue while also promoting that the operator and excavator use their best judgement to develop and confirm a plan for continued excavation.

Staff acknowledges the comment.

**Comment 5** – regarding section 4401

PG&E supports the requirement for excavators to keep valid and current contact information. If properly adhered to, this would eliminate challenges operators may experience when contacting excavation company personnel. Having valid and current contact information for personnel knowledgeable in the proposed excavation activities will improve communication and limit second-hand information transfer which increases risk.

Staff acknowledges the comment

**Comment 6** – regarding section 4501

The current regulations prevent the use of any tools other than hand tools in the tolerance zone which makes it difficult for excavators to determine the exact location of a subsurface installation in hard soils. Thus, PG&E provides absolute support for this regulation as it balances the concerns around excavation with the overall goal of damage prevention. The equipment configuration and specifications provide the excavator with greater flexibility to select the appropriate power tool for use within the bounds of safe excavation practices. PG&E supports the additional language around manner of use as it also promotes worker safety.

PG&E has concerns with subpart (a)(3) as it appears to limit and condition the regulation to specific subsurface installation types. PG&E suggests striking this section unless there is a reasonable demonstration that a difference in the regulations should exist. Subpart (a)(3) appears to provide special treatment depending on the type of subsurface installation, which can lead to unnecessary limitations. For example, the prohibited use of authorized tools in subsurface installations identified by orange markings may cause confusions for excavators in joint-trench installations where these facilities exist with the facilities of other utilities. Another approach would be to add provisions in the language that tools other than hand tools be allowed if mutually agreed upon by the operator and excavator.

PG&E also questions the application of the limits to subpart (a)(4). PG&E urges the Dig Safe Board to apply limitations only in circumstances that warrant a special provision.

Subpart (c) requires written approval between the operator and the excavator after a consultation and agreement as to the type of equipment that can be used other than hand tools. PG&E believes it is reasonable for the industry to engage in conversation and discussion about the equipment and how to proceed using the equipment outlined in the prior subpart. PG&E finds that the limits on the type and size of the hand tool will be adequate to allow for safe practices, and that a consultation and discussion can prevent reckless use of the tools, especially around high priority subsurface installations. As an operator and owner of high-priority subsurface installations, it is critically important that the operator is comfortable with the method used by excavators. PG&E views increased communication and agreement in writing between the operator and excavator as positive aspects of this proposed rule. Field meetings are typically documented in the USA tickets; therefore, the practice of agreeing to the type of tool and safe practices under this section should also be recorded in the USA ticket. For example, a written agreement could be as simple as a note in the USA ticket that explains that during the field meeting, the excavator proposed that the conditions and soil type warrant the use of a pneumatic spade. The note can state that based on the discussion the operator and excavator agreed to move forward with the process. PG&E supports greater consultation and flexibility and commends the Dig Safe Board for requiring written documentation of these meetings, but suggests specific requirements around documentation.

The comment notes that the regulation exempted communication lines (subdivision (a)(3)) and traffic signal lines (subdivision (a)(4)) from the types of facilities which an excavator could otherwise locate using power tools. In considering the conditions stated in this regulation, the Board noted that communication and traffic signal lines are often buried much closer to the surface than other types of facilities.

Regarding the assertion that an agreement regarding the use of power tools reached under subdivision (c) should be recorded in the USA ticket, staff submit that the parties to the agreement, the excavator and operator, necessarily document the agreement. And as both parties possess the agreement, and can produce it later if needed, no important interest is served by also requiring the parties to provide the agreement to a call center.

<u>Attachments</u>	<u>No.</u>
Resolution No. 20-01-05	1
Comments	2
Text of Regulations	3
Resolution No. 19-07-02	4

**RESOLUTION NO. 20-01-05**

**RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE  
EXCAVATION BOARD APPROVING THE ADOPTION OF THE  
REGULATIONS FOR THE AREA OF CONTINUAL EXCAVATION  
RENEWAL TICKET REQUIREMENT AND AB 1914 IMPLEMENTATION  
PURSUANT TO THE DIG SAFE ACT OF 2016 AND AUTHORIZING  
RULEMAKING PROCEEDINGS**

WHEREAS, pursuant to the Dig Safe Act of 2016 (Stats. 2016 Ch. 809 (SB 661)) (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, enforce the statute on specified persons, and recommend enforcement to the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, and the Office of the State Fire Marshal;

WHEREAS, the Board must adopt regulations to implement the statute relative to area of continual excavation ticket renewal and use of equipment other than hand tools within the tolerance zone prior to determination of the exact location of a subsurface installation;

WHEREAS, pursuant to Government Code section 4216.10, the Board must develop a continual excavation ticket renewal process;

WHEREAS, pursuant to Government Code section 4216.4(a)(2)(C), on or before July 1, 2020, the Board is required to adopt regulations to implement the use of power-operated or boring equipment prior to the determination of the exact location of a subsurface installation; and

WHEREAS, Government Code section 4216.22 provides that the 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;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

Section 1. The proposed regulations for the area of continual excavation renewal ticket requirement and AB 1914 implementation, are hereby approved in substantially the form submitted to the Board by staff. The Executive Officer is hereby authorized, for and on behalf of the Board, to proceed as required by the



Administrative Procedure Act to adopt the proposed regulations and submit the proposed regulations with the supporting documentation required by law to the Office of Administrative Law.

Section 2. The Executive Officer is hereby authorized, for and on behalf of the Board, to take such actions, including making or causing to be made such changes to the proposed regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD. 399 and STD. 400, that the Executive Officer may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon approval.

Date of Adoption: January 13, 2019

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 19-07-02 adopted by the California Underground Facilities Safe Excavation Board on July 15, 2019: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING THE ADOPTION OF THE REGULATIONS FOR THE AREA OF CONTINUAL EXCAVATION RENEWAL TICKET REQUIREMENT AND AB 1914 IMPLEMENTATION PURSUANT TO THE DIG SAFE ACT OF 2016 AND AUTHORIZING RULEMAKING PROCEEDINGS.

---

Tony Marino  
Executive Officer

---

Carl Voss  
Chair

Date: July 15, 2019

**Lock, Kerstin@CALFIRE**

---

**From:** Nickless, Jeremiah <Jeremiah\_Nickless@kindermorgan.com>  
**Sent:** Tuesday, November 5, 2019 6:50 AM  
**To:** CALFIRE Dig Safe Regs  
**Subject:** Comments: Dig Safe Regulations ACE & Tools

**Warning:** this message is from an external user and should be treated with caution.

RE: Section 4216.4(a)(2)(C) of the Government Code authorizes the Board to adopt regulations governing the use of power equipment to expose subsurface installations.

- The use of power tools prior to identifying subsurface installations is not an idea scenario for many different reasons that depending on the situation could lead to serious injury or even death and or large financial cost.
- One simple mistake while looking for a subsurface installation could lead to loss of power, water, gas, or any other valuable service to the public.
- If you mistake what you think is a rock for slurry it could lead to an accident that could cause danger to the worker, the public, and the facility itself.
- The proposed changes would add to an already existing issue of contractors attempting to dig and expose subsurface installations in a non-safe manner.
- The use of power equipment could cause damage to subsurface installations that may or may not be immediately noticeable at the time of excavation and further down the road cause issues or failure to that utility.
- Companies go above and beyond to protect assets and use safe digging around high profile assets and by changing the law to allow power tools prior to exposing and identifying these assets makes it harder to enforce safe digging practices with excavators.

With all things being considered I strongly urge the board to reconsider the allowance of power equipment to expose subsurface installations prior to positive identification in the effort to keep workers, property, and facilities safe.

Thanks,  
*Jeremiah Nickless*  
Compliance Specialist – Damage Prevention – Houston, TX  
Office – 713-420-2602  
Cell – 480-528-1651  
Alt. – 480-220-5043  
Simply 5 - 32602  
Email. – [jeremiah\\_nickless@kindermorgan.com](mailto:jeremiah_nickless@kindermorgan.com)

*“Successful people are ones who can lay a firm foundation with the bricks others have thrown at them.”*

**KINDER MORGAN**





**Bloomstine &  
Bloomstine**

1100 N Street, Suite 2C, Sacramento CA 95814 • 916 444-9453 • Fax 916 444-8413

December 23, 2019

CAL FIRE / OFFICE OF THE STATE FIRE MARSHAL  
2251 Harvard Street, Suite 400  
Sacramento, CA 95815  
Attn: Diane Arend, Code Development and Analysis

**SENT VIA ELECTRONIC EMAIL TO: [digsaferegs@fire.ca.gov](mailto:digsaferegs@fire.ca.gov)**

Dear Ms. Arend:

Please find the following comments regarding the California Underground Facilities Safe Excavation Board's (Board) proposed regulations on behalf of my client, the Southern California Contractors Association (SCCA). The proposed regulations are referenced by the Office of Administrative Law as "Notice File Number Z2019-1028-3." SCCA is grateful for the opportunity to comment on the proposed regulations.

These comments are timely and have been electronically delivered prior to the 12:00 am, December 24, 2019 deadline. They are enumerated by section of the proposed regulation below.

#### **Background and Interest**

SCCA is a trade association of approximately 300 businesses. By virtue of their membership, SCCA contractors are subject to several master labor agreements. This means they only employ workers represented by a union. They construct a variety of heavy civil infrastructure projects including roadways, highways, dams and other earthworks.

The association was established in 1974 after it seceded from the Engineering and Grading Contractors Association. SCCA has been engaged with the call before you dig law since its inception with SB 1577 (Chapter Number 1249, Statutes of 1980) to the reforms contained most recently with AB 1166 (Chapter 453, statutes of 2019).

The primary function of a heavy civil engineering contractor is to manipulate the earth into a useful function. Heavy civil engineering contractors must excavate into the ground to achieve this function, making Government Code Section 4216 critical to the safety and well-being of the contractor, its employees, the equipment it owns, the surrounding area and potentially any underground infrastructure. Government Code Section 4216 is therefore critical to the successful operation of an excavating contractor and, in turn, to the Southern California Contractors Association

#### **Chapter 1. General. Article 1. General**

#### **Section 4003 Valid and Current Contact Information for Members of Regional Notification Centers**

SCCA is thankful for the communication encouraged by proposed Section 4003. The ability for an excavator to contact an operator in a timely manner represents a best practice in the industry.

However, SCCA does not find significant issues with the existing practice when contacting an operator. Moreover, the issue of “authorized” is un-defined in the section. Is authorization applicable to a field-level operator employee or the specific individual that will or has completed the locating and marking service? Does the “person” referenced in 4003(a)(1) include a third party company locating and marking for an operator? These are issues that will need to be clarified by the Board through some type of judicial or regulatory explanation.

**Chapter 4. Area of Continual Excavation. Article 1. General.**  
**Section 4305. Persons Eligible to Work Under a Continual Excavation Ticket**

SCCA is thankful for the Board’s efforts to promulgate regulations for areas of continual excavation as directed by the Legislature in Government Code 4216.10(e). The idea that a farmer tilling a field must initiate contact with one of the regional call centers and then renew a ticket every 28 days falls well outside the spirit of Government Code Section 4216. SCCA commends the Board for its work in this area of the law.

**Chapter 5. Pre-Excavation Responsibilities. Article 1. Responsibilities of Excavators**  
**Section 4401. Valid and Current Contact Information for Excavators Using the Regional Notification Centers.**

Proposed section 4401(a) requires an excavator, when contacting one of the regional call centers, to provide “the contact information for a person knowledgeable in the proposed excavation.” Section 4401(a)(2) further requires the information to be accurate and to be updated with the call center if the person changes.

SCCA has considerable concern with this proposal. Foremost, Government 4216.2(b) merely requires an excavator to notify the call center with its plans to excavate. Nothing in Government Code 4216 et seq. requires an excavator to provide any type of contact information, let alone “accurate” information. Based on those grounds, the Board has exceeded its mandated.

Secondly, there are many different types of excavators within the construction industry. From farmers tilling their fields, to an excavator installing a for sale sign for a real estate agent, to an international joint venture constructing high speed rail within the state — there are many different types of excavators. Not all excavators handle and process their tickets in the same way. Some may have a foreman in the field make contact with the call center and others may have a staff member person handle all tickets for the company. In some instances, the contact person may not even physically exist in the state of California. Requiring contact information for a person “knowledgeable in the proposed excavation activities” is unreasonable based upon the complexities of the excavation industry and the different means for businesses to manage tickets.

Requiring the excavator to update contact information is also unreasonable. Proactively contacting the regional call center because an excavator’s staff member happens to be going on vacation is unnecessary and does not reflect the complexities of the excavation industry nor the different means for businesses to manage tickets. The Board should not assert itself at this level of detail for this particular issue.

SCCA suggests the regulation should better reflect the industry’s practices and Government Code Section 4216’s requirements. Excavation companies are, at their core, businesses. Responsible businesses have procedures and processes for a whole variety of business functions including providing information regarding excavation tickets. A better approach is to simply require contact information for the excavator and to eliminate 4401(a)(2) in its entirety.

Most concerning to SCCA is the potential for violations of this section and subsequent sanctions. Should an excavator not provide updated information, it is in violation of the regulations and subject to penalties. Not providing updated information because an excavator's staff member, for example, went on vacation is an overreach of the intent of Government Code 4216 and should not be considered a violation, especially when excavators are already equipped to handle such requests without regulatory direction.

**Chapter 5. Pre-Excavation Responsibilities. Article 1. Responsibilities of Excavators**  
**Section 4501. Use of Equipment Other Than Hand Tools to Determine the Exact Location of a Subsurface Installation**

SCCA commends the Board and staff for its work implementing AB 1914 (Chapter Number 708, Statutes of 2018). This section adds the use of pneumatic, electric or hydraulic hand tools in order to locate the exact location of subsurface installation.

SCCA is particularly thankful for not requiring permission from the operator to proceed with the use of those types of tools. Rather, Proposed Section 4501(c) requires the excavator to request consultation with the operator and requires the operator to respond to the request and discuss with the excavator how to safely proceed. The association was concerned that third-party excavators would have difficulty receiving permission to use the hand tools if the regulation specifically required positive permission from the operator. SCCA members have already witnessed preferential treatment for excavators that have contracts with operators to install, maintain or otherwise improve their underground property. Third-party excavators, ones that merely come into contact with underground utilities through the normal course of an excavation project, do not seem to have the same positive outcomes for such requests that in-house employees or excavators working for operators have. The proposed regulation is neutral and does not favor one excavator-type over another.

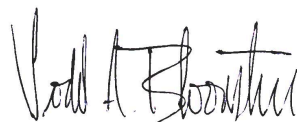
**Continued Over-Reliance on Government Code Section 4216.22**

SCCA is concerned the Board and staff continue to greatly rely on the broad authority granted in Government Code Section 4216.22. In fact, five out of the six proposed sections contained in Z2019-1028-3 reference 4216.22.

Government Code Section 4216.12 creates the Board and charges it with coordinating education and outreach activities, developing standards, investigating violations and enforcing compliance on entities other than utility companies and contractors. (It has the authority to *recommend* sanctions on utility companies and contractors.). SCCA believes the Board and staff's focus should be on achieving the tasks the legislature explicitly charged it to accomplish.

Again, SCCA is pleased for the opportunity to comment on the proposed regulations and looks forward to continuing to participate in the rule-making process.

Cordially,



Todd A. Bloomstine

cc: Mr. Tony Marino, Executive Officer, Underground Facilities Safe Excavation Board



**Jessica M Melton**  
Representative  
State Agency Relations

1415 L Street, Suite 280  
Sacramento, CA 95814  
O: (916) 386-5712  
M: (916) 386-5720  
Jessica.Melton@pge.com

December 23, 2019

Cal Fire / Office of the State Fire Marshall  
2251 Harvard Street, Fourth Floor  
Sacramento, CA 95815  
Attn: Diane Arend, Code Development & Analysis

**RE: PG&E COMMENTS ON PROPOSED RULEMAKING TO CALIFORNIA  
UNDERGROUND FACILITIES SAFE EXCAVATION BOARD SECTIONS 4003(A)(1),  
4305, 4310, 4345, 4401, 4501**

Pacific Gas and Electric Company (PG&E) appreciates the opportunity to comment on the California Code of Regulations Title 19, Division 4, California Underground Facilities Safe Excavation (“Dig Safe”) Board Proposed Regulations. PG&E recognizes that the proposed rulemaking is the result of hard work by several engaged participants before the Dig Safe Board. PG&E is encouraged by the advancement of these proposed rules, especially the use of power tools within the tolerance zone. PG&E is committed to maintaining and operating its energy systems safely and reliably, with public and employee safety as the single most important driver of our work. The proposed regulations will enhance worker safety and reduce the risk of injury while performing excavation work around subsurface installations. Thus, PG&E commends the Dig Safe Board staff’s thorough work in its Initial Statement of Reason that explains that these regulations will have a positive impact on worker safety and on the health and welfare of California residents. PG&E supports these regulations as they are intended to enable excavators to more readily coordinate work with utility operators and to better protect utility installations when excavating.

PG&E submits the following comments structured to mirror the proposed regulations:

**I. Section 4003(a)(1). Valid and Current Operator Contact Information for Members of Regional Notification Centers**

PG&E generally supports the proposed text in Section 4003(a)(1), Valid and Current Contact Information for Members of Regional Notification Centers. PG&E currently has a dispatch and information system in place that is regularly updated. The revision will make operator contact information more readily available to excavators who need to determine the exact location of a

subsurface installation. By requiring operator contact information such as name, telephone number, and email, those who may need to be contacted can be reached through multiple means of communication. PG&E questions whether the rule should be more explicit about where the information is stored. It would add clarity to address whether this information is stored in the application or database.

While PG&E supports the added provision to help foster easier communication between members of regional notification centers, excavators, and operators, PG&E seeks to highlight the importance of using phone calls to address immediate needs. Excavation sites are very dynamic and may require immediate action or discussion to resolve issues that arise. While email communication is effective to communicate a plan or understanding, phone calls to direct contacts have been found to be the most effective way to address immediate action items.

PG&E suggests adding language to address a process if members neglect to provide the valid contact information, such as temporary suspension of membership of Regional Notification Centers until updated information is provided.

## II. Section 4305. Persons Eligible to Work Under a Continual Excavation Ticket

PG&E generally supports the specific purpose of Section 4305, Persons Eligible to Work Under a Continual Excavation Ticket. PG&E proposes that the means of communication be more clearly defined. Section 4305 states “shall communicate information” but does not clearly outline the type of communication. PG&E suggests that written communication should mirror the same data fields as the Area of Continual Excavation Agreement. PG&E suggests the proposed regulation include a requirement that the continual excavation ticket requestor update the ticket upon any change in the initial description and that the ticket requestor also maintain current documentation for all excavators authorized to work on their behalf. This section should outline an obligation to identify those who are authorized by the excavator to perform work because this information will provide clarity to investigators on authorized excavators in the event an incident occurs.

## III. Section 4310. Continual Excavation Ticket Renewal Reminder Notifications

PG&E supports the use of electronic reminder notifications before ticket expiration. The reminder is a simple and efficient means of communicating the deadline and allows for the excavator to have advance notice of when to apply for a renewed ticket.

## IV. Section 4345. Onsite Meeting and Plan Following Renewal of a Continual Excavation Ticket Near High -priority Subsurface Installation

PG&E supports allowing the holder of a renewed continual excavation ticket to continue working for 30 days to allow the excavator and operator to meet and agree to a new continual



excavation plan. This proposed section strikes a balance between allowing work to continue while also promoting that the operator and excavator use their best judgement to develop and confirm a plan for continued excavation.

V. Section 4401. Valid and Current Contact Information for Excavators Using the Regional Notification Centers

PG&E supports the requirement for excavators to keep valid and current contact information. If properly adhered to, this would eliminate challenges operators may experience when contacting excavation company personnel. Having valid and current contact information for personnel knowledgeable in the proposed excavation activities will improve communication and limit second-hand information transfer which increases risk.

VI. Section 4501. Use of Equipment Other Than Hand Tools to Determine the Exact Location of a Subsurface Installation

The current regulations prevent the use of any tools other than hand tools in the tolerance zone which makes it difficult for excavators to determine the exact location of a subsurface installation in hard soils. Thus, PG&E provides absolute support for this regulation as it balances the concerns around excavation with the overall goal of damage prevention. The equipment configuration and specifications provide the excavator with greater flexibility to select the appropriate power tool for use within the bounds of safe excavation practices. PG&E supports the additional language around manner of use as it also promotes worker safety.

PG&E has concerns with subpart (a)(3) as it appears to limit and condition the regulation to specific subsurface installation types. PG&E suggests striking this section unless there is a reasonable demonstration that a difference in the regulations should exist. Subpart (a)(3) appears to provide special treatment depending on the type of subsurface installation, which can lead to unnecessary limitations. For example, the prohibited use of authorized tools in subsurface installations identified by orange markings may cause confusions for excavators in joint-trench installations where these facilities exist with the facilities of other utilities. Another approach would be to add provisions in the language that tools other than hand tools be allowed if mutually agreed upon by the operator and excavator.

PG&E also questions the application of the limits to subpart (a)(4). PG&E urges the Dig Safe Board to apply limitations only in circumstances that warrant a special provision.

Subpart (c) requires written approval between the operator and the excavator after a consultation and agreement as to the type of equipment that can be used other than hand tools. PG&E believes it is reasonable for the industry to engage in conversation and discussion about the equipment and how to proceed using the equipment outlined in the prior subpart. PG&E finds

that the limits on the type and size of the hand tool will be adequate to allow for safe practices, and that a consultation and discussion can prevent reckless use of the tools, especially around high priority subsurface installations. As an operator and owner of high-priority subsurface installations, it is critically important that the operator is comfortable with the method used by excavators. PG&E views increased communication and agreement in writing between the operator and excavator as positive aspects of this proposed rule. Field meetings are typically documented in the USA tickets; therefore, the practice of agreeing to the type of tool and safe practices under this section should also be recorded in the USA ticket. For example, a written agreement could be as simple as a note in the USA ticket that explains that during the field meeting, the excavator proposed that the conditions and soil type warrant the use of a pneumatic spade. The note can state that based on the discussion the operator and excavator agreed to move forward with the process. PG&E supports greater consultation and flexibility and commends the Dig Safe Board for requiring written documentation of these meetings, but suggests specific requirements around documentation.

## VII. Conclusion

PG&E thanks the Dig Safe Board for their commitment to involve stakeholders throughout the Contact Information, Continual Excavation Ticket, Use of Power Tools Near Subsurface Installations Proposed Rulemaking. PG&E staff is available to further discuss these comments and answer any questions.

Sincerely,

/s/

Jessica M Melton



## Underground Service Alert

Of Southern California

December 20, 2019

Diane Arend – Code Development & Analysis  
Cal Fire/Office of the State Fire Marshal  
PO Box 944246  
Sacramento, CA 94244-2460

RE: Comments: Dig Safe Regulations ACE & Tools – Section 4003/4401/4310

Underground Service Alert of Southern California (DigAlert) believes in safety in damage prevention and would hope that any regulations developed by the Dig Safe Board would address safety concerns. However, a few of the proposed regulations do not seem in the best interest of safety.

While DigAlert applauds the Dig Safe Board for trying to solve the issue of having current contact information for its members, after 40 years DigAlert has found that keeping its members information current is not an easy task. Adding an additional regulation that members must not only maintain valid and current information, but also that they must have a contact that “can reach a person authorized to respond to inquiries regarding the determination of the exact location of subsurface installations” will make this task even more difficult.

DigAlert has, at the direction of our Board of Directors and in the interest of safety, always taken a ticket even if the excavator has not delineated before contacting the center as required (4216.2(a)), or they have not given the proper number of days notification (4216.2(b)). The excavator is made aware that they are in violation of California Government Code (CGC) section 4216. The proposed regulation 4401 (a)(1) requiring excavators to provide a name, telephone number and an email address of “a person knowledgeable” will result in the center taking a ticket and informing the excavator they are in violation of regulations if they have not provided all the information.

Furthermore, the proposed regulation 4401 (a)(2) requiring the excavator to have the contact information and the person most knowledgeable of the proposed excavation activities be accurate during the entire time the ticket is valid will result in additional notifications sent to members and the excavator each time a change is made. This may result in unintended consequences for DigAlert. If too many emails are sent to a domain, then the provider can black list DigAlert's email server and notifications won't be sent until DigAlert can be white listed again. The same could happen with the renewal reminder notifications for area of continual excavation tickets.

As more regulations are added, each time a member or excavator is investigated, each infraction of a regulation can then be added to their violations of CGC 4216; is that truly in the interest of safety?

Sincerely,

Ann Diamond  
President

## TEXT OF PROPOSED REGULATIONS

### California Code of Regulations

#### Title 19. Public Safety

#### Division 4. California Underground Facilities Safe Excavation Board

Added text is shown in underline.

### Chapter 1. General

#### Article 1. General

#### **Section 4003. Valid and Current Contact Information for Members of Regional Notification Centers**

(a) Members of regional notification centers shall maintain valid and current contact information, including phone number, email, and address, with the appropriate regional notification center, and shall promptly inform the appropriate regional notification center of any changes to the contact information.

(1) Each member shall provide at least one valid and current contact that includes the name, telephone number, and email address of an individual or business unit that can reach a person authorized to respond to inquiries regarding the determination of the exact location of subsurface installations operated by the member.

(b) Regional notification centers shall provide updated contact information for their members to the Board upon request by the Board.

Authority cited: Sections 4216.4 and 4216.22, Government Code.

Reference: Sections 4216.1, 4216.4, and 4216.12, Government Code.

### Chapter 4. Area of Continual Excavation

#### Article 1. General

#### **Section 4305. Persons Eligible to Work Under a Continual Excavation Ticket**

An excavator who contacts a regional notification center to request a continual excavation ticket shall communicate information about the extent of the area of excavation, the location of subsurface infrastructure within the area of continual excavation, and the type of work described within the continual excavation ticket to all

workers, including any subcontractors, authorized by the excavator to perform work within the area of continual excavation.

Authority cited: Sections 4216.10, 4216.11 and 4216.22, Government Code.

References: Sections 4216.10 and 4216.12, Government Code.

### **Section 4310. Continual Excavation Ticket Renewal Reminder Notifications**

- (a) In response to a request from an excavator for a continual excavation ticket, a regional notification center shall provide the excavator with a continual excavation ticket and information or tools to assist the excavator with renewing the ticket.
- (b) (1) If the excavator requesting a continual excavation ticket has provided electronic contact information to the regional notification center and the excavator has granted the regional notification center permission to use the electronic contact information to provide a reminder notification in advance of ticket expiration, the regional notification center shall use the excavator's electronic contact information to provide one or more notifications to the excavator as a reminder to alert the excavator of the need to renew the ticket.
- (2) At least one reminder notification shall be sent no earlier than two months before ticket expiration and no later than ten days prior to ticket expiration. The reminder notification shall include the continual excavation ticket number and expiration date of the ticket. The reminder notification may include a hyperlink or other means by which the excavator may access a portal for electronic ticket renewal.
- (c) For the purposes of this section "electronic contact information" means an email address, a short message service (SMS) number, or another means of electronic communication offered by a regional notification center.

Authority cited: Sections 4216.10, 4216.11, and 4216.22, Government Code.

Reference: Sections 4216.10 and 4216.12, Government Code.

### **Section 4345. Onsite Meeting and Plan Following Renewal of a Continual Excavation Ticket Near High Priority Subsurface Installations**

An excavator may continue excavation pursuant to an Area of Continual Excavation Agreement (Agricultural Operations) or an Area of Continual Excavation Agreement (Flood Control Facilities) for thirty days following the renewal of a continual excavation ticket to allow the excavator and the operator of the high priority subsurface installation

to set up an onsite meeting at a mutually agreed upon time to renew or to develop and agree to a new area of continual excavation plan pursuant to Section 4351 or Section 4361.

Authority cited: Sections 4216.11 and 4216.22, Government Code.

Reference: Sections 4216.10, 4216.11, and 4216.12, Government Code.

## **Chapter 5. Pre-Excavation Responsibilities**

### **Article 1. Responsibilities of Excavators**

#### **Section 4401. Valid and Current Contact Information for Excavators Using the Regional Notification Centers**

(a) When notifying a regional notification center of intent to excavate pursuant to Government Code section 4216.2, subdivision (b) or Government Code section 4216.10, subdivision (a), an excavator shall provide the contact information of a person knowledgeable in the proposed excavation activities so that an operator may contact the person regarding excavation activities that may occur around subsurface installations in the area of proposed excavation.

(1) The contact information shall include a name, telephone number, and an email address.

(2) The contact information shall be accurate during the period in which the ticket is valid. If either the person knowledgeable in the proposed excavation activities or the contact information for the person knowledgeable in the proposed excavation activities changes during the period in which the ticket is valid, the excavator shall provide updated contact information to the regional notification center.

Authority cited: Sections 4216.11 and 4216.22, Government Code.

Reference: Sections 4216.2, 4216.3, 4216.11, and 4216.12, Government Code.

#### **Section 4501. Use of Equipment Other Than Hand Tools to Determine the Exact Location of a Subsurface Installation**

(a) An excavator may use equipment other than hand tools within the tolerance zone of a subsurface installation for the purpose of determining the exact location of the subsurface installation if all of the following conditions are satisfied:

- (1) The operator has responded to the excavator with a locate and field mark as provided in Government Code section 4216.3, subdivision (a)(1)(A)(i).
  - (2) The equipment conforms to the requirements as specified in subdivision (b) and has not been modified to function outside those requirements.
  - (3) The field mark does not indicate a subsurface installation type classified under the orange category of the "Guidelines for Operator Facility Field Delineation" in Appendix B of the most recent version of the Best Practices Guide of the Common Ground Alliance and in conformance with the uniform color code of the American Public Works Association.
  - (4) The field mark as identified using abbreviations in the "Guidelines for Operator Facility Field Delineation" in Appendix B of the most recent version of the Best Practices Guide of the Common Ground Alliance does not indicate street lighting or traffic signal.
  - (5) The excavator has classified the soil within the tolerance zone as Type A or Type B, as provided in Appendix A of Section 1541.1 of Title 8.
- (b) An excavator may use equipment other than hand tools within the tolerance zone of a subsurface installation for the purpose of determining the exact location of a subsurface installation consistent with the requirements of subdivision (a) if the equipment and the equipment's manner of use conform to the following requirements:
- (1) Equipment configuration and specifications:
    - (A) The tool shall be a handheld percussive pneumatic, electric, or hydraulic hammer that drives a bit.
    - (B) The tool weight without accessory shall not exceed 40 lbs.
    - (C) The bit used shall be no less than 4 inches wide, have a rounded edge, and present no sharp surfaces.
  - (2) Manner of equipment use:
    - (A) The equipment must be used according to the manufacturer's instructions.
    - (B) The bit edge shall be placed parallel, not perpendicular, to the orientation of the subsurface installation as indicated by the field mark.
- (c) An excavator shall request consultation with the operator of the subsurface installation to determine how to safely proceed if the use of hand tools, or

equipment other than hand tools as permitted in this section, is not a safe and effective means of determining the exact location of the subsurface installation. The operator of the subsurface installation shall respond to such a request within two working days not including the date the operator received the request and shall discuss with the excavator how the excavator can safely and effectively proceed. An excavator may use equipment other than as permitted in subdivisions (a) and (b), if the excavator and operator agree in writing upon the equipment to be used and the manner in which it will be used.

(d) This section shall not apply to the use of a vacuum excavation device, which is determined by Government Code 4216.4, subdivision (a)(2)(A).

Authority cited: Sections 4216.4, 4216.12, 4216.18, and 4216.22, Government Code.

Reference: Sections 4216.2, 4216.4, 4216.10, and 4216.12, and 4216.18, Government Code.



**RESOLUTION NO. 19-07-02**

**RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE  
EXCAVATION BOARD APPROVING THE ADOPTION OF THE  
REGULATIONS FOR THE AREA OF CONTINUAL EXCAVATION  
RENEWAL TICKET REQUIREMENT AND AB 1914 IMPLEMENTATION  
PURSUANT TO THE DIG SAFE ACT OF 2016 AND AUTHORIZING  
RULEMAKING PROCEEDINGS**

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, enforce the statute on specified persons, and recommend enforcement to the Registrar of Contractors of the Contractors State License Board, the Public Utilities Commission, and the Office of the State Fire Marshal;

WHEREAS, the Board must adopt regulations to implement the statute relative to area of continual excavation ticket renewal and use of equipment other than hand tools within the tolerance zone prior to determination of the exact location of a subsurface installation;

WHEREAS, pursuant to Government Code section 4216.10, the Board must develop a continual excavation ticket renewal process;

WHEREAS, pursuant to Government Code section 4216.4(a)(2)(C), on or before July 1, 2020, the Board is required to adopt regulations to implement the use of power-operated or boring equipment prior to the determination of the exact location of a subsurface installation; and

WHEREAS, Government Code section 4216.22 provides that the 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;

THEREFORE, BE IT RESOLVED by the California Underground Facilities Safe Excavation Board as follows:

Section 1. The proposed regulations for the area of continual excavation renewal ticket requirement and AB 1914 implementation, are hereby approved in substantially the form submitted to the Board by staff. The Executive Officer is hereby authorized, for and on behalf of the Board, to proceed as required by the

Administrative Procedure Act to adopt the proposed regulations and submit the proposed regulations with the supporting documentation required by law to the Office of Administrative Law.

Section 2. The Executive Officer is hereby authorized, for and on behalf of the Board, to take such actions, including making or causing to be made such changes to the proposed regulations as may be required for approval thereof by the Office of Administrative Law, and to execute and deliver any and all documents, including STD. 399 and STD. 400, that the Executive Officer may deem necessary or advisable in order to effectuate the purposes of this resolution.

Section 3. This resolution shall take effect immediately upon approval.

Date of Adoption: July 15, 2019

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 19-07-02 adopted by the California Underground Facilities Safe Excavation Board on July 15, 2019: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING THE ADOPTION OF THE REGULATIONS FOR THE AREA OF CONTINUAL EXCAVATION RENEWAL TICKET REQUIREMENT AND AB 1914 IMPLEMENTATION PURSUANT TO THE DIG SAFE ACT OF 2016 AND AUTHORIZING RULEMAKING PROCEEDINGS.

/s/ Tony Marino

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Tony Marino  
Executive Officer

/s/ Carl Voss

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Carl Voss  
Chair

Date: July 15, 2019