California Underground Facilities Safe Excavation Board

July 13, 2021

Agenda Item No. 5 (Action Item) – Staff Report

Adoption of the New Fee Regulation (Resolution No. 21-07-01)

PRESENTER

Jeff Brooks, Attorney

SUMMARY

Staff will discuss comments received from the public regarding the Board's proposed fee regulations.

Staff recommends approval of Resolution No. 21-07-01 to authorize the executive officer to proceed, as required by the Administrative Procedure Act, to adopt the proposed regulations.

DISCUSSION

The Board's pending fee regulation package was published for review by members of the public for a 45-day period that began on May 21 and ended on July 5. During that time, anyone with interest was able to submit comments on the package. And one entity, the Underground Service Alert of Southern California, did so.

COMMENTS FROM UNDERGROUND SERVICE ALERT OF SOUTHERN CALIFORNIA

On behalf of Underground Service Alert of Southern California, Ann Diamond provided these comments.

COMMENT 1

DigAlert appreciates that the California Underground Facilities Safe Excavation Board recognized that the current regulation of fee collection has not been working smoothly and believes the new regulation will streamline the process for its members.

COMMENT 2

We applaud the increase in the number of locate transmissions threshold from 200 to 500 new ticket transmissions. Aligning with new ticket transmissions will make it less confusing for our members as we have been billing them based on new tickets since 2004.

Staff acknowledges and thanks DigAlert for these comments.

COMMENT 3

DigAlert seeks clarification on Section 4011(a) and 4011(a)(1)(B)(i). What is the difference between the two provisions? What is the intent of both provisions?

For ease of reference, section 4011(a) reads:

> (a) A regional notification center shall collect the fee described in Section 4010 from its members on the Board's behalf. A regional notification center shall send an invoice to a member on the same billing cycle it uses to send the invoice to the member for dues to pay the operating costs of the regional notification center pursuant to Government Code 4216.1.

And section 4011(a)(1)(B)(i) reads:

> (i) A regional notification center shall send an invoice to a member for the fee at substantially the same time as the regional notification center sends an invoice to the member for dues to pay the operating costs of the regional notification center.

The billing cycle in proposed section 4011(a) refers to the periodicity in which regional notification centers receive their invoices. For example, DigAlert members have a monthly billing cycle. USA North 811 members, on the other hand, can choose among three billing cycles: monthly, annual (January-December), and annual (July-June). Proposed section 4011(a) requires the regional notification center to use the same billing cycle for regulatory fee invoices as for member dues invoices.

Section 4011(a)(1) refers to mechanisms by which the regional notification centers may invoice for the fee. In collecting the 2019 regulatory fee, several regional notification center members who received invoices on an annual billing cycle had voiced displeasure in receiving an invoice for membership dues, paying those dues, and then subsequently receiving an invoice for the regulatory fee that they they had been unaware was also coming. Staff also raised concerns that the percentage gap in revenue collected between USA North 811 membership dues and the Board's regulatory fee from USA North 811 members may have been in part a result of members receiving the regulatory fee a month after they received their invoices for membership dues. For that reason, the Board intends for a member to have both the membership dues and the regulatory fee in front of the member when the member makes payment of either. In that way they will have the full cost of membership when paying their fees.

If a regional notification center invoices the fee as a line item on its existing membership dues invoice pursuant to 4011(a)(1)(A), the member necessarily receives the membership dues and regulatory fees invoice simultaneously. If a regional notification center chooses to issue a separate invoice for the regulatory fee pursuant to 4011(a)(1)(B), however, 4011(a)(1)(B)(i) requires that the invoices be sent at substantially the same time. Representatives of the regional notification centers send most invoices via email and indicated that technical limitations prevent them from sending both membership dues and the regulatory fee in the same email. Therefore, the regional notification centers can't send the invoices at the same time, but can nonetheless do so with minimal delay. A regional notification center that sends invoices for the Board's fee within a couple hours of sending invoices for membership dues has sent invoices at substantially the same time. A regional notification center that sends invoices for the Board's fee a week after sending invoices for membership dues has not.

COMMENT 4

Under the Section 4011(a)(4) the proposed regulation states "Use of the seal of the State of California is authorized" but paragraph (4), the same provision, also authorizes the use of the "Board Seal." Which seal is authorized?

DigAlert's question identifies a typographical error in the published regulation text which staff will correct.

Section 4011 requires the call centers to send invoices to members to collect the fees. And at subdivision (a)(4), section 4011 authorizes use of the Board seal: "A regional notification center may use the Board seal on an invoice requesting a member pay the Board's fee…."

In authorizing use of the seal, subdivision (a)(4) also requires that an invoice which uses the seal contain this text: "Use of the seal of the California Underground Facilities Safe Excavation Board is authorized pursuant to Section 4011 of Title 19 of the California Code of Regulations."

However, the text published for 45-day review contains an error referring to the State seal rather than the Board seal. The published text reads: "Use of the seal of the State of California is authorized…."

Staff will correct the mistake. The correction will not require an additional 15-day publication period because it doesn't materially alter any requirements, rights, or responsibilities contained in the regulation.

RECOMMENDATION

Staff recommends that the Board, having considered these comments, adopt the proposed resolution directing staff to proceed with the rulemaking process.

ATTACHMENTS

A. Comments provided to the Board

B. Text of the proposed regulations

C. Resolution No. 21-07-01: Adoption of the New Fee Regulation

DIGALERT

Underground Service Alert

Of Southern California

June 15, 2021

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

RE: Comments Regarding Notice File Number Z2021-0511-02

Underground Service Alert of Southern California (DigAlert) appreciates that the California Underground Facilities Safe Excavation Board recognized that the current regulation of fee collection has not been working smoothly and believes the new regulation will streamline the process for its members.

DigAlert seeks clarification on Section 4011(a) and 4011(a)(1)(B)(i). What is the difference between these two provisions? What is the intent of both provisions?

Under the Section 4011(a)(4) the proposed regulation states "Use of the seal of the State of California is authorized" but paragraph (4), the same provision, also authorizes the use of the "Board Seal." Which seal is authorized? Please recall that the Board stated at its May 2021 meeting that the state seal could not be used on regional notification center invoices. Please advise.

We applaud the increase in the number of locate transmissions threshold from 200 to 500 new ticket transmissions. Aligning with new ticket transmissions will make it less confusing for our members as we have been billing them based on new tickets since 2004.

While parts of the new regulations will require more work for DigAlert, we believe that it is in the best interest of our more than 900 members that all aspects of fee collection come from a single source.

If you have any questions about DigAlert's comments, please contact me at 951-808-8113 or ann@digalert.org.

Sincerely,

Ann Diamond
President

TEXT OF PROPOSED REGULATIONS (Original)

California Code of Regulations
TITLE 19. PUBLIC SAFETY
Div. 4. California Underground Facilities Safe Excavation Board
Chapter 1. General
Article 1. General
Sections 4010, 4011

Added text is shown underlined.
Deleted text is shown in ~~strikethrough~~.

4010. Fees

(a) (1) Each member of a regional notification center as defined in Government Code, section 4216, subdivision (q) who receives ~~more than 200~~ 500 or more locate request transmissions in the ~~previous calendar~~ calculation year shall pay a fee to support the operational expenses of the California Underground Facilities Safe Excavation Board as provided in the following formula:

Fee = (member locate request transmissions / statewide locate request transmissions) X Board operational expenses

(2) In the formula above:

(A) “member locate request transmissions” represents the number of locate request transmissions the member of the regional notification center received in the ~~previous calendar~~calculation year;

(B) “statewide locate request transmissions” is the total number of locate request transmissions issued by the regional notification centers in the ~~previous calendar~~calculation year, not including those locate request transmissions issued to members who received less than ~~200~~500 locate request transmissions in the ~~previous calendar~~calculation year; and

(C) “Board operational expenses” is the sum of the estimated operational expenses, including any loan repayment, of the California Underground Facilities Safe Excavation Board in the ~~current calendar~~billing year, subject to the State Budget Act and not to exceed the amount listed in subdivision (e). ~~Act. The “Board operational expenses” is $7 million for each calendar year 2019, 2020, and 2021, subject to the State Budget Act. The “Board operational expenses” is $3.8 million for calendar year 2022 and each calendar year thereafter, subject to the State Budget Act.~~

~~(3) The “member locate request transmissions,” “statewide total locate request transmissions,” and the “Board operational expenses” shall be reflected on the invoice to each member of a regional notification center.~~

~~(b) (1) Each member of a regional notification center shall remit the fee under subdivision (a) to the regional notification center by the due date in the billing statement issued by the regional notification center.~~

~~(2) At least semi-annually on April 1 and October 1, the regional notification centers shall submit to the California Underground Facilities Safe Excavation Board the fees received by the regional notification centers as of the date of submittal to the California Underground Facilities Safe Excavation Board.~~

~~(c) If a member fails to pay the fee by the due date in the billing statement as provided in subdivision (b), the Board shall issue an invoice to seek and obtain the fee directly from the member and charge the member a late fee of 5% of the amount of the fee, in addition to the fee due in the billing statement. The regional notification centers shall inform the Board of any failure to pay the fee and shall provide a copy of the member's billing statement.~~

(b) The Board shall post the following to its website by March 1 of each year,

(1) The Board operational expenses for the upcoming billing year, not to exceed the amount listed in subdivision (e).

(2) The statewide locate request transmissions from the recently ended calculation year, the member locate request transmissions for each member of a regional notification center from the calculation year, and the amount of regulatory fees to be paid by each member of a regional notification center in the upcoming billing year.

(c) (1) A member shall remit payment to the regional notification center who issued the invoice to the member.

(2) A member who fails to pay the fee within 90 days of the date the invoice was issued pursuant to Section 4011 is subject to a late fee of 5% the amount of the fee, in addition to the fee due on the invoice.

(d) For purposes of this section, ~~"locate request transmission" means the notification provided by a regional notification center to an operator to locate and field mark in response to a new or renewed ticket, as identified in Government Code section 4216.2, subdivision (e), to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i), or to a ticket requesting a remark, as identified in Government Code section 4216.3, subdivision (b).~~ the following terms have the following meanings:

(1) "Billing year" means the July 1 to June 30 period in which the Legislature authorizes expenditures in the State Budget Act.

(2) "Calculation year" means the January 1 to December 31 calendar year before the beginning of the billing year.

(3) "Locate request transmission" means the notification provided by a regional notification center to an operator to locate and field mark in response to a new ticket, as identified in Government Code section 4216.2, subdivision (e)

or to a new ticket created to replace an expired ticket, as identified in Government Code section 4216.2, subdivision (i).

(e) The value of the estimated operational expenses in subdivision (a)(2)(C), subject to the State Budget Act, shall not exceed the following amounts for the following time periods:

(1) $7 million for each calendar year 2019, 2020, and 2021.

(2) $2.5 million for the period of January 1, 2022 to June 30, 2022.

(3) $7.0 million for the billing year that begins on July 1, 2022 and for each billing year thereafter.

(f) For the period of January 1, 2022 to June 30, 2022, the fee shall be calculated pursuant to subdivision (a) with the following modifications:

(1) The calculation year shall be January 1, 2021 to June 30, 2021.

(2) The billing year shall be January 1, 2022 to June 30, 2022.

(3) The Board operational expenses shall be as identified in subdivision (e) paragraph (2).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216, 4216.1, 4216.2, 4216.3, and 4216.16, Government Code.

4011. Fee Collection

(a) A regional notification center shall collect the fee described in Section 4010 from its members on the Board's behalf. A regional notification center shall send an invoice to a member on the same billing cycle it uses to send the invoice to the member for dues to pay the operating costs of the regional notification center pursuant to Government Code 4216.1.

(1) A regional notification center shall use one of the following two methods when invoicing to their members for the fee:

(A) A line item on the invoice that the regional notification center sends to a member to collect member dues.

(B) An invoice dedicated to the fee.

(i) A regional notification center shall send an invoice to a member for the fee at substantially the same time as the regional notification center sends an invoice to the member for dues to pay the operating costs of the regional notification center.

(2) A regional notification center shall make reasonable efforts to inform members of past due balances and account credits.

(3) An invoice sent pursuant to this subdivision shall include the "member locate request transmissions," "statewide total locate request transmissions," and "Board operational expenses," as defined in Section 4010 subdivision (a).

(4) A regional notification center may use the Board seal on an invoice requesting a member pay the Board's fee, a statement informing a member of balance due for the Board's fee, or communication informing a member of the consequences of late payment or nonpayment of the Board's fee, if the document contains the following language:

"Use of the seal of the California Underground Facilities Safe Excavation Board is authorized pursuant to Section 4011 of Title 19 of the California Code of Regulations."

(5) If using the member contact information available to it, a regional notification center is unable to provide an invoice for the fee to a member, the regional notification center shall inform the Board.

(b) (1) A regional notification center shall reissue an invoice to a member who has not paid an invoice within 90 days of receipt. The regional notification center shall include the 5% late fee described in Section 4010 subdivision (c)(2).

(2) Prior to reissuing the invoice pursuant to paragraph (1), the regional notification center shall send a reminder to the member of the unpaid invoice no later than 30 days before reissuing the invoice that includes the 5% late fee. The reminder will notify the member of the date at which the 5% late fee applies.

(c) A regional notification center shall remit to the California Underground Facilities Safe Excavation Board the fee revenues that it collected prior to January 1, April 1, July 1, and October 1 each year. The regional notification center shall remit the fee revenues within 15 days of the dates above.

(d) A regional notification center shall provide the following information to the Board electronically:

(1) On or before the 15th day of each month, information about invoices for the fee issued and payments received in the previous month, including the following:

(A) For each member, the invoice number, invoice due date, amount of the regulatory fee, and the applicable email or physical address the invoice was sent to.

(B) For each member, the invoice number, payment received date, amount of payment received, identifying information about the payment such as check, ACH, or other payment identification number.

(C) A copy of any invoice to collect the fee sent.

(2) On or before the 15th day of the month following each calendar quarter described in subdivision (c), regional notification center membership information about the following:

(A) The number of locate request transmissions, as defined in Section 4010 subdivision (d)(3), each member received in the recently-ended quarter.

(B) The membership of the regional notification center, including the member identification code, any member identification sub-code.

(C) Contact information for each member, including the names, phone numbers, and email addresses for the general contact and billing contact.

(3) Information provided pursuant to paragraphs (1) and (2), except for subparagraph (C) in paragraph (1), shall be provided in tabular form, each of entry of which shall include the member name, member identification code, and any member identification sub-code.

(e) Notwithstanding the requirement in subdivision (a) for a regional notification center to send an invoice to a member on the same billing cycle it uses to send the member an invoice to collect dues to pay the operating costs, if a regional notification center does not send an invoice to a member for dues during the period of January 1, 2022 to June 30, 2022, the regional notification center shall send an invoice to the member prior to March 1, 2022 to collect the fee for the six-month billing period described in Section 4010, subdivision (f).

NOTE: Authority cited: Section 4216.22, Government Code. Reference: Sections 4216, 4216.1, 4216.2, 4216.3, and 4216.16, Government Code.

CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD

RESOLUTION No. 21-07-01

A RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING THE ADOPTION FOR THE REGULATIONS PROVIDING FOR PAYMENT OF THE BOARD'S FEE

Whereas the California Underground Facilities Safe Excavation Board is authorized by Government Code section 4216.16 to obtain funding for its operational expenses from a fee charged to members of the regional notification centers;

Whereas the Board must apportion the fee in a manner consistent with formulas used by the regional notification centers;

Whereas the Board received a loan from the California High-Cost Fund-B Alternative Committee Fund under the Budget Act of 2017 for the Board's initial operational expenses to implement the Act, and the Board expects to incur continuous operational expenses;

Whereas the Board must establish the amount of the fee charged to the members of the regional notification centers to obtain sufficient funds to timely repay the loan and meet the Board's continuous operational expenses; 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 of the Government Code sections 4216, et seq.;

Be it resolved as follows:

The proposed regulation to modify a fee charged to members of the regional notification centers is hereby approved in substantially the form submitted to the Board by staff. The Executive Officer is hereby authorized, for an on behalf of the Board, to proceed as required by the Administrative Procedure Act to adopt the proposed regulation and submit the proposed regulation with the supporting documentation required by law to the Office of Administrative Law.

The Executive Officer is hereby authorized, for and 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 necessary documents to the Office of Administrative Law.

Date of Adoption: July 13, 2021

I hereby certify that the attached resolution is a true and exact copy of Resolution No. 21-07-01 adopted by the California Underground Facilities Safe Excavation Board on July 13, 2021: RESOLUTION OF THE CALIFORNIA UNDERGROUND FACILITIES SAFE EXCAVATION BOARD APPROVING THE ADOPTION FOR THE REGULATIONS PROVIDING FOR PAYMENT OF THE BOARD'S FEE.

_____	_____
Tony Marino	Marjorie Del Toro
Executive Officer	Chair

Date: July 13, 2021