

Some Call Centers Resist Providing Contact Numbers

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The Maryland PUC has directed the state Notification Center to post the contact phone numbers of member utilities on its web site. According to Jim Holzer, Operations Manager of One Call Concepts, the operator of the center, the PUC is overwhelmed with complaints about wrong/missing/late markouts and wants excavators to talk directly to the utilities involved.

Jim Barron, a Maryland based contractor and President of the National Utility Contractors Association (NUCA), says that when Maryland locators get in an overload position, they use a provision of state law that allows them to put in a 24-48 hour delay, and they do so regularly. It often takes 96 hours to get a locate. Furthermore, contractors can't get locators to show up for meets if they aren't paid to go to meets, only for tickets, Barron says.

FLASH!-On May 29 a discussion started on the Underspace Forum (underspace.com/forum/index.html) when Underground Focus Editor Ron Rosencrans told about calling in a ticket for an addition to his garage and noted in the Remarks section of the ticket that there were two electric lines to be marked. When only one was marked, he recalled the ticket. The locator came back and put flags on the paint marks for one line that had already been marked. The second line was still not marked. Ron says: "Soon, the phone company contractor will come to re-plow the cable that has to be moved for the garage addition, and the logical place to do that is right where that unmarked power cable runs. Having someone electrocuted on my property sure wouldn't look good for the editor of Underground Focus. I shudder to

think what would happen if I were a typical homeowner who didn't pay much attention to my underground services. Now I have new insight that gives me added sympathy for excavators who complain about mismarking and difficulty in getting marks on the ground."

"In fairness to Diggers Hotline of Wisconsin," Rosencrans continues, "they did give me a number to call at the power company, and I will be calling it. In my present situation, I'm shocked that there are call centers around the nation that would withhold this information. Don't know what they think they are accomplishing. I'd find some other way to get the information, rather than see someone's life endangered. I'm not a lawyer, but if someone were hurt because a call center withheld information that could have prevented the accident, I would expect that victim to sue the call center."

Over the next few weeks there were many different perspectives offered on this item, some agreeable, some not so agreeable, but those who followed it were able to get a feel for the "other guys shoes."

FLASHBACK!-A year and a half ago on these pages, we explored the topic of Notification Centers providing contact phone numbers of utility companies to excavators who request them when calling in tickets. The purpose of getting phone numbers was to allow the excavator to contact the locator when marks were missing, wrong, or late so as to correct the situation before damage resulted. At that time about half of the 16 centers where I had called tickets did provide phone numbers and the others would provide phone numbers only to report damage!

After that article was published, I heard that one state board changed its policy after a question was asked at a board meeting and the board was surprised to find they had a policy forbidding giving out phone numbers and no one had a good reason why.

When the topic was brought up at the Common Ground Alliance Best Practices

meeting in November 2001, Chairman Will Carey suggested that the topic be studied as a potential new Best Practice. A subcommittee with yours truly chairing it was formed.

A simple Best Practice statement was written: "Notification center provides excavator with facility operator emergency and locate phone numbers when requested." That started a very lively discussion in which some n primarily excavators--supported the proposed Best Practice and some Notification Center Executive Directors, did not.

George Kennedy, Safety Director of NUCA wrote: "If we are going to work together to prevent damage, all stakeholders need to cooperate with each other. It is very important that all stakeholders do all they can to locate lines before the contractor starts to dig in an area where the marks are questionable or utilities are unmarked."

Executive Directors who object to the proposal say they are concerned about excavators abusing the service by calling locators instead of the center for locate requests and about the liability for being sued if they give out wrong numbers. One ED suggested that when excavators have questions about marks, they should re-call the center. "If there is no response when follow-ups are done on any ticket, then our staff calls the operator directly to find out what the delay is." He also suggests that if excavators want contact phone numbers, they should attend the excavator training meetings conducted around the state and swap business cards with locators in attendance. Other call center directors have recommended calling "meets" to swap cards.

One industry expert, who prefers to remain unnamed, says this attitude sounds like a holdover of the old regulated utility mentality that values time less than a contractor does. "Contractors have to make the best use of time to be successful. In this day of modern communications it is unreasonable to require a face to face meeting to exchange phone numbers," he said.

A proposal can become a "Best Practice" only when there is consensus for it and no one strongly objects to it. This issue has been discussed at two Best Practices Committee meetings. As of the August meeting, there is still a strong objection to it by several

call centers, and it has been referred back to the subcommittee for rewording that would include giving out contact phone numbers, but only for emergencies n that is, to report damage, not to prevent it. The next committee discussion will be December 3, in San Diego, prior to the Damage Prevention Convention.

It has been suggested that a wider discussion might give a better idea how a larger number of people see this issue. How about using the Underspace Forum for this discussion? It is available to all interested parties. Check it out and add your thoughts. Postings will be available to Common Ground committee members and are important to help shape public policy.

Consider whether rewording the proposal to giving out phone numbers only for emergencies is wise. Is it better to get a foot-in-the-door with "Notification center provides excavator with facility operator emergency phone numbers when requested" and try for "and locate phone numbers" later? Or might dropping "and locate" cause some centers to stop the service they now provide?

What do you think? Wade into this discussion. Be nice, but tell it the way you see it. Your participation may help solve the dilemma.

"Sole Negligence" Term Spreads Accident

Blame

If the excavator finds an unmarked or mismarked utility, some state statutes require the excavator to stop digging and notify the operator and/or the notification center. This can be a problem if the center isn't open weekends and you can't find a phone number. Some states allow continued digging if it is done "carefully," and some don't.

The Minnesota law seems clear: if you called a valid ticket, waited the proper time, then hit an unmarked utility, you were not liable for damage. Isn't that what the law means when it says: "Reimbursement is not required if the damage to the underground facility was caused by the sole negligence of the operator, or the operator failed to comply with section 216D.04, subdivision 3 [locate and mark facilities within 48 hours of receiving an excavation notice] "?

However, a Minnesota jury recently decided that an excavator "did not conduct the excavation in a careful and prudent manner" when he damaged an unmarked

fiber optic line, and 70 percent of the direct cause of the accident was the excavator's fault. It awarded \$13,000 for repairs and \$76,000 for loss of use. The Court of Appeals affirmed the jury's award, because the statute did not cancel common law negligence.

The case has recently been appealed to the Minnesota Supreme Court.

In this incident, there was a warning sign near, but not at, the excavation site. Apparently the jury and the Appeals Court felt this should have given the excavator sufficient notice that there was a facility in the area.

How much does an excavator have to do in order not to be negligent? How far around the dig site should he look for clues such as pedestals, signs, valve boxes, etc.? How subtle does a clue have to be so that missing it won't be negligent? I know of one excavator who paid over 50 percent of a damage cost because he failed to spot a faded orange mark from someone else's locate some distance from his work. He hit the line that should have been painted in response to his ticket.

Excavators may want to extend their pre-excavation time lines

a bit to allow not only for time to go to the site to white-line it, but also to make a return trip to survey the site for unmarked facilities and verify the accuracy of the marks by exposing the marked utilities near their work prior to bringing in the backhoe. If you see a pipeline or cable warning marker, but no marks, call the phone number on the sign. Hopefully, it will be answered at a call center that will give you the facility owner's contact number that you can call to get the line marked.

Who reimburses the excavator for the downtime waiting for the locator to return and complete the markout? Most

states do not address this issue, but New Hampshire's statute says the operator "shall be liable for any damages incurred by the excavator as a result of the operator's failure to mark such facilities."

Some contractors will even invest in their own locating equipment and training in its use as another means of avoiding unexpected downtime or damages.

Perhaps the most important lesson in these cases is that damage prevention is a team effort. Each party not only has to do their own work well, but also needs to keep an eye on the whole project, and whenever anyone notices that something isn't right, work to fix the problem, not the blame.

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