Written Testimony Provided To:
Interim Economic Impact Committee
By Danette Welsh
Manager, ONEOK Government Relations
April 26, 2016

Regarding: Draft One Call Legislation
Bill Draft 17.0115.02000

Chairwoman Triplett and members of the committee,

Thank you for the opportunity to provide comment on the draft language proposed for your consideration related to the state's One Call laws. As a member of the Stakeholder group, my goal today is to provide an overview of how the draft legislation addresses the 11 changes recommended through consensus by the Stakeholder group.

Below is a list of each recommendation, the reason for the recommendation, and where and how the recommendation is addressed in the bill draft.

Recommendation: Board Composition

Reason for Recommendation: Adding a position for gathering and transmission oil and gas pipelines, separate from the current gas distribution pipeline position, would better represent the composition of the state's underground facilities, as there is a vast difference in gas distribution lines, and gathering and transmission lines.

Draft Law Change:

- Page 5, line 29: Adds a seat to the North Dakota One Call Board for oil or gas transmission or gathering pipeline owners/operators.

Recommendation: Prudent Digging Practice

Reason for Recommendation: Clarify the practice of 'careful and prudent digging to mean an excavator must hand dig within two feet of the centerline indicated for any facility.

Draft Law Change:

- Page 1, lines 15-19: Adds the word 'manually' to indicate hand digging, and clarifies the area to be manually excavated as two feet from the outer edges of an underground facility on a horizontal plane as located by a facility owner or operator.

ONEOK, INC.
4501 Coleman Street, Suite 101
Bismarck, ND 58503-0431
701-751-6005, Fax 701-751-6007
www.oneok.com

Recommendation: Culpability Language

Reason for Recommendation: "Willfully" requires that a prosecutor prove someone acted contrary to commonly accepted levels of prudence, and includes knowingly, recklessly, or intentionally, making it a lower standard to prove than "Knowingly". (NDCC 12.1-02-02).

Draft Law Change:

- Page 14, lines 11-14: Changes the level of proof from 'knowingly' to 'willfully', which encompasses 'knowingly', 'recklessly', and 'intentionally'.

Recommendation: Positive Response (location)

Reason for Recommendation: Positive response would benefit the excavator by allowing excavation to proceed as soon as possible.

Draft Law Change:

- Page 3, lines 22-24: Provides a definition for 'positive response'
- Page 8, lines 13-16: Allows an excavator to being excavation when the excavator has received notice all facilities have been located or cleared, or at the expiration of the locate window, to include any extensions.
- Page 8, lines 28-30: Authorizes the notification center to establish procedures to manage positive response communications between operators and ticket holders.
- Page 11, lines 13-17: Requires an operator to provide notice (positive response) to the notification center that marking has been completed or that the area has been cleared.

Recommendation: Site Identification

Reason for Recommendation: To mandate more precise site identification, narrowing the scope of excavation for location purposes, by physically or electronically marking the area to be excavated.

Draft Law Change:

- Page 7, lines 22-31: Requires an excavator to identify the excavation site by physical or electronic means, or other means as agreed upon by the parties to the ticket.
- Page 8, lines 1-7: Provides exemptions for site identification beyond what is required when filing the locate request ticket.

Recommendation: Survey Ticket

Reason for Recommendation: Creation of a survey or information gathering ticket could alleviate a few issues. First, data could be exchanged electronically when possible. Second, flag management could be enforced. Third, the location window could be adjusted in order to allow digging requests to remain the primary focus.

Draft Law Change:

- Page 11, lines 25-31: Defines the requirements for filing a survey ticket.
- Page 12, lines 1-31: Defines site identification requirements, as well as notification center responsibilities for a survey ticket.
- Page 13, lines 1-6: Further defines the responsibility of the ticket holder for any physical marking materials used by the facility owner/operator to satisfy the survey ticket request.

Recommendation: Burden of Proof When No Excavation has Occurred

Reason for Recommendation: The burden of proof would lie with the excavator (or requestor of the locate ticket) to show excavation has occurred when disputing a bill for third and subsequent location fees if there is a belief no excavation has occurred in the two tickets immediately prior to the third request.

Draft Law Change:

- Page 10, lines 17-19: Clarifies if the presence of excavation is disputed, the excavator bears the burden of proof that excavation has occurred.

Recommendation: Cost of Location for Non-locatable Facilities

Reason for Recommendation: The cost of locating facilities not locatable within a certain range, two feet from the outer edge on either side of the marked location, should be billable to the facility owner.

Draft Law Change:

- Page 9, lines 11-16: Clarifies the facility operator is responsible for costs of location. Additionally, clarifies the operator is responsible for reasonable excavation costs if the excavator is unable to locate a facility within two feet on either side of the operator's facility location markings.

Recommendation: Cost of Location for Abuse of System/Repeat Location Requests

Reason for Recommendation: Manage the multiple locate costs for operators, created by an abuse of the One Call system due to failure to maintain location marks, excavators would be responsible for reasonable locate costs if the public service commission determines the additional locate requests were caused by an excavator's failure to reasonably maintain and remove markings.

Draft Law Change:

- Page 10, lines 25-31: Defines the excavator's responsibility for reasonable costs, if additional locate requests were caused by an excavator's failure to reasonably maintain and remove markings.

Recommendation: Window for Locates to be Complete

Reason for Recommendation: Clarify that the ticket is valid at the time of planned excavation or as otherwise agreed, or changing the law to start the 48 hour location window at midnight the day the ticket is entered, unless otherwise specified.

Draft Law Change:

- Page 3, lines 4-10: Defines the 'locate period' as the later of: beginning at midnight of the day the location request was submitted, excluding weekends and holidays, and any twenty-four hour extension provided through the notification center, or as the period between the submission of the locate request to the notification center and the noted date of excavation.
- Page 9, lines 5-8: Requires facilities to be located and marked within the locate period or as agreed to by the parties.

Recommendation: Size of Ticket

Reason for Recommendation: To define set sizes for urban and rural project tickets.

Draft Law Change:

- Page 8, lines 9-11: Defines urban ticket areas as limited to three blocks, and rural ticket areas as limited to five linear miles or an area of 160 acres.